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# The American Political Science Review

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VOLUME XIV

1920

THE AMERICAN POLITICAL SCIENCE REVIEW

BALTIMORE, MD.  
THE WAVERLY PRESS

1920



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**287733**

Y8A98L1 08078A70

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# The American Political Science Review

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Vol. XIV

FEBRUARY, 1920

No. 1

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## PRESENT TENDENCIES IN AMERICAN POLITICS<sup>1</sup>

HENRY JONES FORD

*Princeton University*

For the first time since its sessions began in 1904, the American Political Science Association was last year unable to hold its regular annual meeting. For fourteen years, in unbroken series, the association had brought its members together for conference and discussion; but last year, with more matter in its field engaging thought and provoking study than ever before, the association had to suspend its activities. This was due to circumstances so well known that the matter would be scarcely worth mentioning were it not that it exhibits a plight in which political science is apt to find itself whenever the ordinary course of events is interrupted by some great catastrophe.

In President Lowell's standard work on *Governments and Parties in Continental Europe*, he remarks that to him "the State sometimes presents itself under the figure of a stage-coach with the horses running away. On the front a number of eager men are urging the most contrary advice on the driver, whose chief object is to keep his seat; while at the back a couple of old gentlemen with spy-glasses are carefully surveying the road already traversed." In this picture, drawn by one who is himself an

<sup>1</sup>Presidential address at the annual meeting of the American Political Science Association, Cleveland, Ohio, December 29, 1919.



eminent political scientist, no one can mistake the position assigned to political science. Its occupation is that of the old gentlemen with the spy-glasses. Carrying on the metaphor, one might say that what happened last year to prevent the usual exchange of notes and observations was an upset of the stage-coach, scattering passengers, spilling goods, and making it the first thought with everyone to jump in to save life and property. In this emergency the members of this association were not found wanting. Their ordinary pursuits as students of political science might be suspended, but not their activities as publicists, and their special knowledge and experience were applied to public service in many ways of marked usefulness. Indeed, it is the most hopeful and encouraging incident of that great wreck of civilization in which the world is now floundering that it revealed as never before the new and great resources which the state has acquired through the progress of science and the amassing of expert knowledge in our colleges and universities. Never before has the practical value of educational foundations been so impressively exhibited as by their manifold services during the great war.

But now that the war is over, or at least has dwindled so that it now continues only in particular spots; now that the main task is to clear away the wreck and put things in running order again, what help can political science give in this emergency? To begin with, it has in stock much useful information about forms of government, principles of organization, systems of jurisprudence. The old gentlemen with the spy-glasses have noted much on the road that civilization's stage-coach has already traversed. Their notes and observations have been digested in innumerable treatises. But it may be asked how much of such matter is available for instruction and guidance in the new era upon which the world has entered? For the most part the literature of political science is historical and descriptive. It gives accounts of what has been and what is; but does such knowledge throw much light on what will be? To go at once to the heart of the matter, is political science any better able now than it was in 1787 to answer the important question

which Alexander Hamilton put in the first number of *The Federalist*: "whether societies of men are really capable or not of establishing good government from reflection and choice, or whether they are forever destined to depend for their political constitutions on accident and force?" Hamilton observed that "it seems to have been reserved to the people of this country, by their conduct and example," to decide that question, so that "a wrong election of the part we shall act may deserve to be considered as the general misfortune of mankind."

There was at one period an enthusiastic belief that in the Constitution of the United States reflection and choice had at last superseded accident and force, and that a model of free government was now provided by which all countries and peoples might benefit. The effect upon governmental arrangements was once very marked, but complete examination of the documents shows that this influence soon spent itself, and a decided change of disposition took place. If, for instance, one shall attentively consider the constitutional documents of all the Americas, one will observe, that although in their early forms the Constitution of the United States was the model, this is no longer the case. The constitution of the French republic now excels it in influence. The United States has lost its lead, despite the fact that never has our country bulked larger in the world than now. The present situation is indeed a striking confirmation of Hamilton's opinion that error in our republic becomes the general misfortune of mankind, for it is a fact well known to every student of politics that a belief that our system of government is a failure on the essential point of justice is now a potent influence on the side of social revolution throughout the world. Everywhere the leaders of revolt point to the United States as an example of bourgeois rule and as an evidence of its congenital inability to deal fairly with the masses. Goldsmith's definition of a republic as a country in which the laws govern the poor and the rich govern the laws expresses a view now widely prevalent.

It is not possible that any form of government can be so good as to escape calumny or be able to rule at all times merely by reason and by moral influence; but the case becomes very serious,



the danger of revolution really formidable, when the activity of revolutionists draws support from the calm investigations of impartial students. It is unfortunately the case—and it is a fact that it would be unwise to ignore—that the most important and influential studies that have been made of the institutions of the United States show an increasing spirit of depreciation. Students of political science will generally agree that the three greatest works of this class, all displaying wide knowledge and deep thought, are De Tocqueville's *Democracy in America*, first published in 1835; Bryce's *American Commonwealth*, 1888; and Ostrogorski's *Democracy and the Organization of Political Parties*, 1902. These works form a crescendo of censure upon American government, each reëxamination of the subject confirming previous disapproval and adding to it.

Profound disappointment over results in the United States is undoubtedly a mighty factor in the strong reaction going on against representative government. It is not merely a hole-and-corner sentiment such as the police force can be trusted to suppress; it is a large movement receiving active intellectual support. Everyone who keeps in touch with current literature knows and can mention periodicals of high critical pretensions that have gone over to it. Serious and thoughtful books are appearing with arguments in favor of substitutes for representative government, and advocating new methods of political organization, which, whether that term be employed or not, are decidedly of the soviet pattern. Even such institutions as the Carnegie and Rockefeller foundations, whose origin and management would naturally incline them to conservative views, have been constrained by the results of dispassionate inquiry, to put forth severe indictments of the present system of government. The old veneration for the Constitution, that used to be such a strong American characteristic, has been much impaired.

In my own experience as a teacher—which from what I hear from colleagues is not singular in this respect—a marked change has taken place in the attitude of Young America. Most of our students seem to stick to the opinions they learned at home, in politics as in religion; but there are some ardent, hopeful, active

spirits who take an independent interest in political affairs, and these used to attach themselves with enthusiasm to the cause of civil service reform. Now, they are more likely to take up socialism, and no feature of its propaganda seems to please them more than the contempt and derision it pours upon legislative procedure. Karl Marx's scathing denunciation of what he called parliamentary cretinism is eliciting a response that can scarcely fail to have practical consequences.

This brings us face to face with a very important consideration. What is the matter with political science if it may serve to undermine institutions of government? Has it no settled criteria of political value, no methods of analysis by which it can accurately discern the causes of bad government and prescribe the means of cure? Can it, in fine, be anything more than a branch of history? Can it really maintain pretensions to rank as a genuine science of political institutions, enlightening and directing the arts of practical statesmanship?

After making all the deductions and allowances that candor requires, I think that there is good ground for the assertion that political science is not merely historical, but is a genuine science in that it can supply plain interpretation, clear foresight, and practical guidance to those who consult it. The state of political science may be fairly compared with that of medical science. The one has much the same relation to the body-politic that the other has to the physical body. The field of each science is a hunting ground for quackery and charlatanry; in the case of each the application of well-established principles is obstructed by ignorance and cupidity. But these defects in the situation do not alter the fact that a genuine body of scientific knowledge does exist, and that the real problem is not to supply knowledge but to make available the existing supply. Political science, like medicine, is a progressive science; but in each case actual attainments are immensely in advance of their practical application. The prevalence of typhoid fever and smallpox in American communities does not discredit medical science. It knows just what to do to banish such ailments if allowed to act; the difficulty is not to find out what to do, but it is to obtain means

of doing what ought to be done. Much the same may be said of political science with regard to problems in its field.

It may be laid down as a general principle that when great corrections and improvements are made in the organization of public authority they are accomplished by extending opportunity to political science. The master achievements of statesmanship when closely examined will be found to consist not in devising new principles but in providing means for making known principles available. Napoleon Bonaparte did not himself draft the code that goes by his name, but he made arrangements by which juristic reformers could apply their science to institutions. The present constitution of English city government sprang from the scientific labors of the municipal corporations commission of 1833. The present constitution of Canada sprang from the Durham report of 1839, which was an embodiment of ideas and principles of responsible government that previously had been unable to obtain authoritative expression.

To take a signal instance from our own history, exact inquiry will show that the long, miserable delay in effecting currency reform was not due to lack of scientific knowledge but to the covert legislative influence of particular interests so circumstanced as to be as naturally opposed to reform as peddlers of well water would be to the introduction of a public system of water supply. The passage of the Federal Reserve Act was notoriously the result of such a vigorous exertion of presidential influence as to secure legislative attention to scientific advice. It is, in fine, the law of political progress that sound developments are the result of administrative initiative guided by scientific knowledge. When difficult situations arise in government it generally appears that the main trouble is in the matter of power to act and not through insufficiency of knowledge. If this be true, it follows that political science ought to be able to tell what is the matter with representative government that so strong a popular reaction should be going on against it. I venture to say that political science can do that very thing.

Much obscurity still surrounds the origin and development of representative government, but its nature and requirements

are so accurately known that the cause and cure of the diseases from which it is now suffering have long since been fully stated. In proof of this I need cite only one work, John Stuart Mill's treatise on *Representative Government*. Did time permit it would be possible to show in detail how its analysis explains our present troubles, although the work was published fifty-eight years ago. But all the present occasion warrants is a brief statement of general principles.

The existence of elective assemblies does not necessarily supply representative government or even tend in that direction. It is a commonplace of history that the people of Europe were rescued from the manifold oppressions of feudalism by the development of absolute monarchy; but it is not sufficiently remarked that this was a popular process. The diets, parliaments and assemblies that abounded in the Middle Ages were regarded by the people as organs of class privilege and rapacity, and hence the people energetically supported any movement to wipe them out. Far from absolutism being the result of royal usurpation, kings were simply dragged along by the force of the movement. Powers were forced upon them that they were reluctant to accept. Striking instances of this appear when details are examined. The text has been preserved of an address made to the king of France in 1412, by a national assembly, in which profiteers were denounced, the king was blamed for inaction, and a blunt demand was made that he should seize and use absolute power. At the meeting of the States-General in 1614, the *parlement* of Paris, with the support of the Third Estate, declared it to be a fundamental law that the throne was absolutely independent, though the king himself demurred to a principle that ignored the privileges of the clergy and the nobles. When absolute power was conferred upon the king of Denmark in 1660, he at first refused to accept it, but the burghers closed the gates of the city to keep the nobles from leaving the Diet to collect their forces, and carried their point by sheer intimidation. No fact of European history is better established than that absolute monarchy was erected by public opinion and its burden of responsibility was forced upon kings by the insistence of the



people. If there is now an extensive revolt of popular sentiment against legislative assemblies, it is no new thing, but is the revival of a feeling that was for centuries the strongest political force.

At present representative government is the dominant type of polity. It has spread not only through the western world but also it has been extensively adopted in the East, whose peoples are still taking it up with an enthusiasm that creates some troublesome administrative problems for imperial authority. Today, representative government is probably the most widely diffused political form the world has ever known. If it can be made effective in distributing justice and maintaining order civilization will at last become general throughout the world, instead of subsisting only in particular areas as heretofore. The prospect is so attractive that one is apt to overlook the fact that the ascendancy of representative government is too recent to warrant entire confidence in its permanence. It is a product of the nineteenth century, prior to which representative government was peculiar to England and its offshoots. Probably English success in the Napoleonic wars was the master influence in quelling the old antipathy to legislative assemblies and starting the tide of sentiment in favor of parliamentary institutions which swept over Europe, reshaping all constitutions. But most of them do not date farther back than 1848, so that sufficient time has not elapsed to advance them beyond the experimental stage, and meanwhile it is manifest that there has been some revival of the old antipathy. The cause now is the same as the cause then—belief that institutions purporting to exist for the public welfare are really agencies of private interest and class advantage.

In such a situation, as Mill points out, "the only fruit produced by national representation is, that in addition to those who really govern, there is an assembly quartered upon the public, and no abuse in which a portion of the assembly is interested is at all likely to be removed." That is to say, representative government may assume such a character as to become wholly a nuisance, and this despite the fact that it is apparently

open to the control of public opinion through popular election of representatives. Matters may be so arranged that elections can do no more than make changes among the players in the same old game. The result then illustrates the French proverb that the more change you have the more you get of the same thing. Whichever party wins at the polls, jobbery in office and traffic in legislation will still continue. Party succession then tends to form what in European politics is known as the *Rota*, and in American politics as machine rule. The great consideration then will be not what will benefit the people, but what will please the districts, and cadging for patronage and sparring for points in the electioneering game will become the principal occupation of legislative bodies. To each party it will then appear to be the matter of greatest importance not to allow the other party credit for any achievement, and mutual rivalry in specious claims will give inexhaustible volubility and interminable duration to debate, making it a source of bewilderment rather than enlightenment.

There is no greater fallacy in government than that of electing good men to office. American experience abundantly attests the truth of Mill's observation that "unless a man is fit for the gallows, he is thought to be about as fit as other people for almost anything for which he can offer himself as a candidate." The only real security is by establishing such conditions that whoever is elected, good or bad, will have to behave himself properly. History affords no instance in which a representative assembly has been actually disposed to represent the people if the members are allowed to help themselves to offices and appropriations, and choose for themselves what business they will consider.

Mill clearly points out the serious maladies to which representative government is peculiarly susceptible, and anyone who consults his chapters on the proper functions of representative bodies, and the infirmities and dangers to which representative government is liable, will find that they accurately describe conditions from which American politics now suffer acutely. At the same time, he holds that the ideally best form of government

is representative government. How then are we to distinguish between genuine and spurious forms of representative government? The criteria he mentions may be summarized as follows:

1. There must be direct connection between the executive department and the representative assembly. The proper function of a representative assembly is to exercise control over the government in behalf of the people. It is a board of directors whose business is to keep the administration steadily confronted with its responsibilities. The directors cannot do this intelligently unless the administration is present at their meetings. Who would expect honesty and efficiency in a business corporation in which the board of directors and the executive management were separate, rival concerns, each trying to master the other, and each appealing to the shareholders against the other. Either this situation must be corrected or the business will collapse. This risk to the Constitution of the United States is distinctly pointed out in Justice Story's *Commentaries*, published in 1833.

2. The representative assembly must have no access to official patronage or to the public treasury. The members must be placed under such conditions that they will be personally disinterested in such matters. Then and then only will they act as an organ of control. It is only when representatives are so situated that they have no power to vote to their own use offices and appropriations that they will be vigilant to see that those who do make appointments and propose appropriations shall not be excessive in their demands. If, of its own motion, the executive makes all appointments without confirmation or ratification by any other authority, the representative assembly is then naturally impelled to restrict executive opportunity by economical appropriations. But if the representatives have any means of sharing the appointing power the tendency then is to multiply the offices and resist economy. How great a difference this makes may be observed by comparing the budget of any English legislative body with that of any American legislative body. In the one case the cost of a legislative session is only from five to ten per cent of what it is in the other case. It would be absurd

to impute such a constant result to personal quality of membership. It is obviously a result of system. It is just as marked in the Barbados assembly, representing an electorate in which negroes greatly outnumber the whites, as in the English house of commons.

The matter of cost is, however, trivial in comparison with the effect upon the transaction of public business. When the distribution of patronage is solely an executive function in which the representatives have no participation, a prompt consequence is clear and exact accountancy. Administrative behavior is then subjected to such jealous scrutiny that it becomes an urgent matter of administrative convenience to present budget statements with such orderly classification and in such minute detail that they speak for themselves. I do not know of any American public document that can match in lucidity and comprehensiveness the Blue Book annually laid before the Barbados assembly, which shows what good system can accomplish even under electoral conditions usually regarded as adverse to good government. This is a matter in which anyone can judge for himself who will take the trouble to examine the documents, which are to be found in a number of our public libraries.

But the effect of legislative patronage in producing loose and disorderly accounts, although a grave constitutional defect, is less serious than its effect in deteriorating legislative behavior. When members are in a position to get offices and appropriations for their districts they are, willy-nilly, forced to accept the occupation of party employment agents and district solicitors, converting legislative procedure into a scuffle of local agency, and turning representative government into a spoils system. That is the true explanation of the constitutional decay that is now manifesting itself in connection with representative government.

In addition to these criteria of genuine representative government, Mill lays down the principle that a representative assembly is by its proper nature unfit to attend to details of legislation, and that it should be restricted to acceptance or rejection of legislative projects in their entirety as prepared and submitted by the executive administration. This will be recognized as a principle



ordinarily adopted in the conduct of private business corporations. Instead of mulling over details and attempting to tinker proposals into satisfactory shape, a sensible board of directors will leave such matters to the executive management, and if it fails to give satisfaction the proper thing to do is to change the management. That some restraint upon the lawmaking activities of representative assemblies would be desirable is a thought that must often occur to one in considering the appalling volume of crude and unintelligible legislation dumped into the statute books of this country every year. Experience, however, has shown that this is a matter which takes care of itself when a genuine form of representative government is established. The situation then is such that criticism of measures becomes the most advantageous way of obtaining personal distinction, and a disposition is created in favor of putting upon the administration the work of preparing and presenting bills.

This tendency has attained its most extensive development in Switzerland where without any formal restriction of the right of individual members to introduce bills, it has become the practice to leave all bill drafting to the administration, and it has become customary for the administration to publish in advance of a session the measures it intends to submit. Should the administration fail to present a measure for which there is demand, the usual expedient is a resolution calling upon it to prepare one for consideration. Although the Swiss Congress alters and amends in its discretion, in that matter too it makes use of the administration, which retains charge of the bill and shapes its language in accord with the decisions reached. It is obvious that such a system not only precludes lobby manipulation of the terms of enactments but it also standardizes the language of the laws, making them so clear and intelligible that questions of intention and significance do not occupy the time of the courts. The community is thus spared the torment and expense which result from obscurity and inconsistency in the laws.

If these considerations are well founded, the true cause of the present discontents is not the failure of representative government but the actual lack of it. The people resent the imposture

by which constitutional sanctity is claimed for methods and practices that violate the essential character of representative government. This is an era of unrest and desire for change all over the world, but it is quite noticeable that respect for existing institutions corresponds to the actual value of their representative character. It is notorious that the spirit of revolt is less powerful in English self-governing commonwealths than it is in countries that have adopted English parliamentary institutions without the safeguard of the English budget system. It is least powerful in Switzerland where the representative system is most effectively established. It is vain to expect that the present discontents can be removed merely through sermonizing and patriotic expostulation, so long as defects are allowed which mar the representative character of the actual system of government. To those who put their trust in penal legislation and police activity, I would say with Edmund Burke: "Reflect seriously on the possible consequences of keeping in the hearts of your community a bank of discontent, every hour accumulating, upon which every company of seditious men may draw at pleasure."

## REVOLUTIONARY COMMUNISM IN THE UNITED STATES

GORDON S. WATKINS

*University of Illinois*

On October 15, 1919, a press dispatch from Buffalo, New York, indicated that the primary election returns in that city gave an average of about three hundred votes to the three candidates whose names appeared on the ballot as representatives of the Communist party, the protagonist of the soviet form of government in the United States. The total number of votes cast was 54,000, which shows that the Communist vote was insignificant, numerically. Newspapers ridiculed the diminutive radical vote. All phenomena have a genesis, and it is the fact that a Communist ballot was cast rather than the quantitative character of the vote that has significance for the student of political philosophy and action. To those who saw the revolutionary left wing of the old Socialist party organize the Communist party and the Communist Labor party in Chicago during the first week of September, 1919, this initial appearance of the revolutionary Communists in American political life presages important developments. The event was heralded by revolutionists in this country and in Europe as the emergence of a new era in the political and economic life of the United States. The widespread dissemination of ultra-radical propaganda in connection with recent strikes is further evidence of the revolutionary purposes of Communists in America.

Optimistic prophecies are prevalent to the effect that bolshevism will find no fertile soil in the United States, since American workmen are too prosperous to become susceptible to revolutionary political and industrial philosophy. Similar predictions were voiced even on the floor of the Socialist emergency convention and the Communist Labor party convention last September.

Recent developments in American socialism throw a great deal of light on speculations of this nature. As a matter of fact the soviet form of government, with the identical *ad interim* dictatorship that obtains in Russia at the present time, is being openly advocated in the United States by the Communist party and the Communist Labor party. Both of these parties have declared adherence to the Third (Communist) International, which was convened in Moscow by Nicholai Lenin and Leon Trotzky during the early part of 1919. These groups of American communists are self-expressed supporters of Russian bolshevism, and the principles which they have formulated and are expounding vigorously would, if adopted, introduce a communist régime with all of its revolutionary implications.

An analysis of revolutionary American communism will be clearer if we review briefly the present status of American socialism and the developments that have determined this status. American socialism now comprises a moderate right wing, a vacillating center left, and an extremely radical left wing. The three divisions are officially organized into the Socialist party, the Communist Labor party, and the Communist party, respectively. It is impossible to determine accurately the numerical strength of these parties, on account of the fact that the membership of the old Socialist party has not yet settled sufficiently to warrant an official enumeration. The officials of each party, however, have ventured an estimate of the comparative strength of the three groups. Prior to the recent split in its ranks, the Socialist party had a membership of approximately 100,000. Of this number it still claims 55,000, and concedes a membership of 35,000 to the Communist party and 10,000 to the Communist Labor party.<sup>1</sup> The Communist party claims a membership of 60,000 and it estimates that the Socialist party and the Communist Labor party have about 25,000 and 10,000 respectively, which leaves 5000 members unaccounted for.<sup>2</sup> The estimate made by the Communist Labor party includes 30,000 members

<sup>1</sup> Estimate of Mr. Otto Branstetter, Executive Secretary of the Socialist party, in a letter to the writer, October 14, 1919.

<sup>2</sup> *The Communist*, September 27, 1919, p. 2.

for itself, and 25,000 for the Communist party, which leaves 45,000 still in the ranks of the Socialist party.<sup>3</sup> It is highly probable that with the lapse of several months an official census will find about 46,000 persons in the ranks of the Socialist party, 40,000 in the Communist party, and 14,000 in the Communist Labor party, unless a merger between the last two parties is effected in the meantime, which would throw a majority of American Socialists to the surviving left wing party.

There is not space here to review in detail the causes that have produced the schism in American socialism.<sup>4</sup> A brief summary of these conditions, however, is necessary to a proper understanding of the differences that obtain between the three parties. Generally speaking, the disintegration and the reconstruction in the structure of American socialism are due to the refusal of the right wing faction to abandon its program of opportunism for the ultra-revolutionary platform leading to the establishment of a proletarian dictatorship which was demanded by the left wing of the old Socialist party. This irreparable breach in American socialism is the logical sequence of a similar crisis, disruption, and reconstruction in European socialism, in which the moderates still adhere to the Second International while the revolutionists accept the leadership of Lenin and Trotzky within the Third (Moscow) International.

Like its European contemporaries American socialism even before the world war was experiencing unprecedented disaffection among its adherents, and this discontent has gained momentum during the subsequent years. Naturally enough, the foreign-language federations of the old Socialist party were most largely responsible for the development of dissatisfaction with the party's program of opportunism. Pronounced revolutionary tendencies at the St. Louis Convention of the Socialist party in April, 1917, forced the adoption of a militant declaration against the war, and led to the arrest of the party's leaders. Increasing impatience on the part of the revolutionary membership and

<sup>3</sup> *The Communist Labor Party News*, September, 1919, p. 1.

<sup>4</sup> See an article by the writer on "The Present Status of Socialism in the United States," *Atlantic Monthly*, Vol. 124, No. 6 (December, 1919), pp. 821-830.



its enthusiasm for the Bolshevik Revolution in Russia led to the organization of a Communist Propaganda League in Chicago, on November 7, 1918. There soon followed general agitation for the adoption of a revolutionary Communist program of action, emphasizing the necessity of a radical reconstruction in the thought and practices of American socialism. The left wing section of the Socialist party was organized in New York City early in 1919; and immediately the Lettish, Russian, Lithuanian, Polish, Ukrainian, South Slavic, Hungarian, and Esthonian federations of the Socialist party, representing about 25,000 members, declared their adherence to the program of the left wing faction. Thus far no general movement for secession from the Socialist party had appeared; but the opposition had developed remarkable strength, electing 12 out of 15 members of the national executive committee at the party election. The election, however, was declared fraudulent by the old national executive committee, and the latter decided to remain in office until the emergency convention, called for August 30, 1919, although its term of office should have expired on June 30.<sup>5</sup> This action of the committee, together with its suspension of the foreign language federations, stimulated the opposition of the left wing.

Local Boston, Local Cleveland, and the left wing section of the Socialist party of New York City issued a call for a national left wing conference, which convened in New York City on June 21, 1919. Ninety-four delegates representing twenty states, and chosen especially from large industrial centers, "the heart of the militant proletarian movement," attended this assembly. At the outset of this conference there developed a difference of opinion on the alternatives of organizing immediately a new party devoted to the revolutionary class struggle or of continuing the fight for control of the old Socialist party, at least until the emergency convention. The proposal to organize at once a new party was defeated by a vote of 55 to 38, whereupon 31 delegates, representing for the most part the Russian federations,

<sup>5</sup> Report of Louis C. Fraina, international secretary of the Communist party of America, to the executive Committee of the Communist International. *The Communist*, October 11, 1919.

decided to withdraw. Later this minority of thirty-one issued a call for a convention to open in Chicago on September 1, for the purpose of organizing the new party, thus repudiating all participation in the Socialist emergency convention. The majority delegates at the left wing conference adopted a program to gain control of the old party, and to assure the success of this program a national left wing council was elected to combat the reactionary right wing faction.

By August 1, the national left wing council was convinced that the majority of the membership represented at the left wing conference had repudiated the action of the majority delegates and had indorsed the proposal for the organization of a new party. Consequently, the left wing council joined the organizing committee, elected by the minority delegates, in issuing a call for a convention to organize a Communist party. Out of this convention, held in Chicago during the first week of September, 1919, emerged the Communist party of America, with the dual purpose of waging war against reactionary socialism and against capitalism. Meanwhile, the left wing executive committee of the Socialist party, elected by the revolutionary faction, was denied recognition and office by the old national executive committee. The left wing forces, however, continued their struggle for party control, and carried hostilities to the floor of the emergency convention. There the superior parliamentary tactics of the right wing leaders spelled defeat for the revolutionists, whereupon the latter, led by John Reed, John Carney, and William Bross Lloyd, convoked a separate convention in the I. W. W. hall and organized, on August 31, the Communist Labor party of America.

The emergency convention of the Socialist party did not indorse the Communist International, but submitted the question of indorsement to the membership through referendum, while both of the Communist conventions accepted without qualification the pronouncements of the Communist International and formulated their programs and platforms with Russian bolshevism as the major inspiration. It should be noted here that although the Communists in the United States are divided into two distinct parties and present center left and extreme left factions,

there is a probability that a process of amalgamation will take place sooner or later, which will leave American socialism with but two major parties—the Socialist party on the right and the Communist party on the left. If this consolidation does take place the Communist Labor party, being the weaker of the communist groups, will doubtless become extinct. Thus far extensive negotiations seeking a merger of these two Communist parties have failed on account of the unwillingness of both to effect a compromise on the question of party control and the absence of an acceptable basis of fusion. The rank and file—the unknown quantity in the present reconstruction of American socialism—may soon accomplish what the officials of the two parties have failed to do.

This survey of the conditions that have necessitated a reconstruction in American socialism suggests that there is a fundamental basis of disagreement between the Socialists and the Communists. This fundamental difference is that the Socialists, represented in the Socialist party, accept parliamentary action as an effective and desirable means of overthrowing capitalism and introducing the socialist state; while the Communists, represented in the two Communist parties, oppose parliamentary participation except for purposes of propaganda, and advocate the revolutionary extermination of capitalism as the initial step in establishing a dictatorship of the proletariat, preceding the organization of the communist society. The program of the Socialist party, therefore, is moderate and opportunistic, while the program of the revolutionary Communist parties is ultra-radical, deprecating all compromise with existing political and economic institutions and rejecting parliamentary reform as a means of revolutionizing the social order. Between moderate socialism and revolutionary communism there is no basis for compromise and coöperation.\* Revisionist and reformist socialism organized within the Second International is condemned as counter-revolutionary in philosophy and action, a betrayer of proletarian interests and the prophet of reactionary state capitalism. State

\* *The Communist*, September 27, 1919, pp. 1, 6; *The Communist Labor Party News*, September, 1919, p. 1.

capitalism, precisely that type of state capitalism advocated by moderate socialism, is viewed by the Communists as the highest expression of imperialism and as designed to buttress capitalism in further exploitation of the proletariat. Germany is the Communists' example *par excellence* of what might be expected under state capitalism. Moderate socialism proffers a capitalist parliamentary republic and not a proletarian dictatorship.<sup>7</sup> Revolutionary communism and reformist socialism, therefore, hold different conceptions of the state; the former adheres to the theory that there must be a revolutionary demolition of the capitalist state and organization of a new state under proletarian domination; the latter accepts the bourgeois parliamentary state as the basis for the evolutionary transition from capitalism to socialism.

American communism, like Russian bolshevism, its major inspiration, is an attempt to return to pure Marxism and to obliterate every vestige of pseudo-Marxism represented in opportunistic socialism. In speaking with the leaders and the rank and file of American Communists one is impressed with their strong desire to return to the first principles of communism as enunciated in the manifesto of 1848; and communist literature is replete with orthodox interpretations of the revolutionary class struggle, the materialistic conception of history, the theory of surplus value, and the law of the concentration of capital. Moderate socialism both in Europe and in America have wandered far afield from these fundamental articles of communist faith; and American communists, accepting the challenge of what they believe to be the new era of proletarian dictatorship, are organizing their forces after the manner of their Russian comrades with a view to reconstructing the whole socialist movement on the basis of unadulterated Marxism. One need but examine the manifestoes and programs of the Communist parties to grasp the significance and determination of this purpose.

The program of revolutionary communism in the United States may be summarized briefly as follows: (1) complete disruption

<sup>7</sup> Manifesto of the Communist Party, *The Communist*, September, 1919, pp. 6-8.

of the capitalist state and the elimination of every vestige of bourgeois parliaments; (2) organization of a dictatorship of the proletariat as the initial step in the communist reconstruction of the social order, subsequent to the anticipated successful social revolution; (3) participation in political campaigns under capitalism to be of secondary importance, devoted only to the task of disseminating communist propaganda against the bourgeois state; (4) nominations for public office and participation in elections to be limited to legislative bodies, as municipal councils, state legislatures, and Congress; (5) representatives of American communism in these assemblies not to introduce or support political and social reform measures, but to use their parliamentary powers and privileges in exposing capitalistic oppression of the proletariat; (6) absolute maintenance of the revolutionary class struggle and no compromise or coöperation with political groups not committed definitely and openly to that struggle, as the Socialist party, Labor parties, the Non-Partisan League, and municipal ownership leagues; (7) major activities of the Communist parties to be carried on in the industrial struggles in order to develop a general understanding of the strike in relation to the final overthrow of capitalism, that is, to emphasize the revolutionary implications of the mass strike rather than the immediate purposes of the local walkout; (8) trade-unions to be revolutionized and industrial unionism to be advocated as against the reactionary craft unionism of the American Federation of Labor; (9) coöperation with the revolutionary proletariat of the world to be encouraged, in order to guarantee the success of the Communist International and pave the way for the introduction of world communism comprised of free, coöordinated, coöperating communist societies.\*

The program of revolutionary communism in the United States is similar to the program of Russian bolshevism, namely, complete disruption of the capitalist state, oppression and expropriation of the bourgeoisie, the organization of a proletarian dicta-

\* The Program of the Communist Party, *The Communist*, September 27, 1919, p. 9; The Program and Platform of the Communist Labor Party, *The Communist Labor Party News*, September, 1919, p. 2.



torship and, eventually, the reconstruction of the social order upon a communistic basis. The immediate objective of the Communist attack is the political and economic foundations of the present society. In the Communist program there is no provision for a temporizing compromise with the institutions that constitute the major defenses of capitalism, such as private property, the wage system, the courts, and the parliamentary structure. There is to be no gradual growing into socialism. Evolutionary development has no place in communist parlance; revolutionary extirpation of all those institutions the continued existence of which might facilitate counter-revolutionary movements is the strategy *par excellence* of communism. "The immediate objective of the proletarian revolution is the conquest of the power of the state; and this means the annihilation of the bourgeois state, its parliamentary system and bourgeois democracy, and the introduction of a new 'state' comprised in the dictatorship of the proletariat," states the international secretary of the Communist party of America.<sup>9</sup>

The proletarian struggle, then, is essentially a political struggle. It is political in the sense that its objective is political—the annihilation of all parliamentary defenses of capitalist power, and the substitution therefor of a proletarian commonwealth. It cannot be emphasized too strongly that communism does not propose to "capture" the bourgeois parliamentary machinery, as does moderate socialism, but rather to conquer and destroy it completely, for "As long as the bourgeois state prevails, the capitalist class can baffle the will of the proletariat."<sup>10</sup> This immediate aim of American communism is identical with that executed by Lenin and Trotsky in the Bolshevik Revolution, and is believed to be a tactical necessity in disposing of the old social structure and defending the communist order in its germinal period.

For the realization of their immediate purposes the Communists have outlined a specific program of action. There is to be,

<sup>9</sup> Fraina, Louis C. *Revolutionary Socialism—A Study in Socialist Reconstruction*, p. 213.

<sup>10</sup> Manifesto of the Communist Party, *The Communist*, September 27, 1919, p. 7.

first, the development of a general political strike in which elections will be boycotted, as they were in Russia by the Bolsheviki in the elections for the Second Duma in 1906, and, second, the germination of mass action through the general strike. The method of the Communist attack, therefore, is to be both economic and political. The nature of the political boycott is not at all clear from statements issued by the Communist parties. From the expressions on the convention floor it seems that the political strike is to consist in nonparticipation in elections, which is to serve the purpose of a silent proletarian taboo of the parliamentary régime of capitalism and to emphasize the irreconcilability and incompatibility of bourgeois and proletarian interests. The pronouncements of the Communist groups—the manifestoes, platforms, and constitutions—do not contain provision for such a boycott of elections and do not, moreover, preclude election to public office.

Although the Communists emphasize the fact that not one of the great teachers of scientific socialism has taught the possibility of social revolution through the use of the ballot, they do not ignore entirely the value of voting, or the election of revolutionists to public office, provided these achieve beneficial results for the workers in their great economic struggle. Cognizance is taken of the fact that political campaigns and the election of party representatives to seats in parliamentary bodies provide opportunities for exposing capitalist democracy, educating the workers to a realization of their class interests, and demonstrating the necessity of overthrowing the existing régime. The Communist parties entertain no hope of achieving their purposes at the polls, and warn their adherents against placing confidence in legislative reforms under capitalism.

There is nothing in the program of the Communist Labor party that would prohibit its parliamentary representatives from introducing and supporting legislative measures in the interest of the workers, and on the whole the party appears not adverse to reformatory statutes of any character, provided these advance the proletarian conquest of the state.<sup>11</sup> The Communist party is

<sup>11</sup> Program of the Communist Labor Party, *The Communist Labor Party News*, October, 1919, p. 2.

less vacillating and opportunistic, for its program provides that (1) participation in parliamentary campaigns is of secondary importance, to be used only for the purpose of revolutionary propaganda; (2) parliamentary representatives of the party shall not introduce or support reform measures; (3) Communist representatives shall use the parliamentary forum to interpret and emphasize the revolutionary implications of the class struggle, to expose the oppressive class character of the capitalist state, and to show that parliamentarism and bourgeois democracy deceive the workers with reform palliatives.<sup>12</sup> In order to concentrate its political activity and to prevent degeneration of parliamentary action into reformism, the Communist party limits nominations for public office to legislative bodies, including municipal councils, state legislatures, and the national Congress. For the same reasons the party prohibits coöperation with organizations not committed to the revolutionary class struggle.<sup>13</sup> A similar position in regard to such coöperation is taken by the Communist Labor party.<sup>14</sup>

In relegating legislative reforms to a position of minor importance or completely ignoring such measures, American communism differs from other reform movements, including moderate socialism. For this reason its program is not likely to prove attractive to practically minded American workmen. From parliamentarism the Communist turns to mass action as the most effective means of expediting the social revolution, which he declares to be inevitable. If the immediate aim of communism is political in character, its method of achievement is both political and economic. Politico-economic mass action is the *sine qua non* of the social revolution. According to the Communist analysis of historical developments, isolated economic action in the form of craft unions and sporadic strikes, and parliamentary action in the bourgeois assemblies, have proved futile when viewed from the standpoint of the revolutionary class struggle. The new phase into which the class struggle is just entering necessitates

<sup>12</sup> The Program of the Communist Party, *The Communist*, September 27, 1919, p. 9.

<sup>13</sup> *Ibid.*

<sup>14</sup> *The Communist Labor Party News*, October, 1919, p. 2.

the unification of industrial and political action as a determinant of successful proletarian conquest of political power.<sup>18</sup> As a matter of fact, however, the mass action of American communism is more industrial than political in character.

For the propagation of mass action through the general strike revolutionary communism has a definite policy. Since the ultimate aim of communism is the organization of a workers' industrial republic, the logical channel of approach is through the united action of the industrial and agricultural proletariat. Consequently, communism is conveying to these workers the message effectively enunciated by Marx and Lenin, namely, that capitalism expropriates the proletariat, the difference between wages and product constituting the unearned profits of the capitalists. This surplus value attributed to the efforts of labor must, therefore, become the property of the workers. The differential of production can be regained through mass action in seizing the machinery of industry and appropriating it for the workers. To attain this end the industrial strike must cease to be isolated and passive and become positive, general, and aggressive, preparing the workers for the assumption of industrial administration.

The mass strike is possible only under a synthetic organization of the workers in the basic industries. Recognition of this fact has led revolutionary communism to denounce conservative craft unionism represented in the American Federation of Labor, which it characterizes as a shackle upon the militant movement of the American proletariat, because of its tendency to divide the workers into disintegrated fragments under a reactionary bureaucracy. To the Communist the most vital and promising fact in American trade-unionism is the attempt of the membership to break the rule of conservative officials, and to develop a type of industrial unionism that will respond sympathetically and spontaneously to the revolutionary impulse of the workers. If the Communists' analysis is correct, disintegrated craft unionism is destined to be superseded by industrial unionism, just as moder-

<sup>18</sup> Fraina, *op. cit.*, pp. 178, 179.

ate socialism is giving place to revolutionary communism. Thus unionism will become an agency for militant action in the aggressive struggle of the proletariat against capitalism, and industrial union organization, divorced from the methods and policies of autonomous craft unions and "inspired with the revolutionary purpose, becomes a vital factor in the proletarian revolution."<sup>16</sup>

Industrial unionism develops its real power among the unskilled workers who, untrammelled by obstructions of craft differentiation and stratification and welded into a common mold by machine industry, possess a clear conception of group interests and cultivate the *esprit de corps* of the industrial proletariat. It is this industrial "consciousness of kind," this vigorous sense of common interests, that makes industrial unionism, structurally and functionally, the peculiar unionism of the unskilled workers. American communism has ingeniously sensed this peculiar psychology of the untrained mass.<sup>17</sup> The Communists, however, find limitations even in industrial unionism, on account of the impossibility of organizing the whole working class into industrial unions under the capitalistic régime, and they contend that to achieve the social revolution it will be necessary to enlist the workers, organized and unorganized, by means of revolutionary mass action.<sup>18</sup> Nevertheless, industrial union organization is to be effected whenever and wherever possible, and the general strike is to be generated; for as strikes become general they "acquire political significance, action becomes the action of the mass, the integrated action of an integrated proletariat."<sup>19</sup>

To marshal the forces of the militant masses, American communism has determined to function through local and district units of the two parties assigned to the task of establishing intimate contact with the workers in the mills, workshops, and mines. It is the business of these party units to initiate and support

<sup>16</sup> *The Communist*, September 27, 1919, p. 2.

<sup>17</sup> Cf. *The Programs, Platforms, and Manifestoes of the Communist Parties, and Revolutionary Socialism—A Study in Socialist Reconstruction*, by Louis C. Fraina.

<sup>18</sup> *Manifesto, Program, Constitution, etc.*, of the Communist Party, 1919, p. 12.

<sup>19</sup> Fraina, *op. cit.*, p. 187.

plans for the organization of labor along the lines of the shop steward and shop committee movement in England. Moreover, Communist propagandists are to encourage the organization of these shop committees into industrial councils, district councils, and a central council of all industries, as proposed under the Whitley Plan.<sup>20</sup> These committees and councils afford an effective medium for the dissemination of Communist doctrines, and suggest the practicability of the administration of industry by the workers. Paradoxical as it may seem, many employers, both in Europe and in the United States, have inaugurated similar schemes of shop committees and industrial councils with the hope of satisfying the workers' demand for industrial democracy and preventing the spread of Communist philosophy. There is little doubt, also, that industrial councils have been introduced to "break the back of trade-unionism," precisely what the revolutionary Communist hopes will be achieved.

The organization of a general type of industrial unionism embracing the Industrial Workers of the World, the Workers' International Industrial Union, independent and secession unions, militant unions of the American Federation of Labor, and the unorganized workers, becomes the major task of American communism for two reasons. First, because this type of proletarian organization makes possible the mass strike, with its revolutionary implications, constantly suggesting the feasibility of the conquest of capitalistic political power;<sup>21</sup> and, second, because industrial unionism, organizing the workers by industries, becomes potentially, if not actually, the fundamental basis of the new communist society, together with other administrative agencies necessary to correlate the nonindustrial functions of the new régime.<sup>22</sup> "After the conquest of power the industrial unions may become the starting point of the communist reconstruction of society."<sup>23</sup>

<sup>20</sup> Special Report on Labor Organization, *The Communist Labor Party News*, October, 1919, p. 2; The Program of the Communist Party, *The Communist*, September 27, 1919, p. 9.

<sup>21</sup> Manifesto of the Communist Party, *The Communist*, September 27, 1919, p. 8.

<sup>22</sup> Cf. Fraina, *op. cit.*, p. 220.

<sup>23</sup> Manifesto of the Communist Party, *The Communist*, September 27, 1919, p. 8.



The social revolution, which communism predicts will come through mass action generated in the industries, and which is to assume political character and significance, will introduce the dictatorship of the proletariat as it did in Russia. American Communists entertain no hope of immediate revolution; it may be a decade away, but it is inevitable. Their present task, therefore, is to prepare the workers for the administration of the state and industry during the approaching cataclysm, which will come at a moment of utter collapse of the old structure of society. Communism teaches no obedience to the blind fatalism of what it terms pseudo-Marxism, but purposive and conscious action in the interest of proletarian triumph. The creation of mass action is all important in the immediate policies of communism. "Under the impulse of the crisis, the proletariat acts for the conquest of power, by means of mass action. Mass action concentrates and mobilizes the forces of the proletariat, organized and unorganized; it acts equally against the bourgeois state and the conservative organizations of the working class."<sup>24</sup> To the communist philosopher the vital facts of industrial evolution are the concentration of the machinery of production in the hands of a few, the increasing tendency toward combinations and trusts, and the leveling down of all workers to the ranks of the unskilled. To these facts the unskilled proletariat—the hope of communism—is expected to respond through mass action for the appropriation of political power and the organization of the proletarian dictatorship.

The dictatorship of the proletariat is a recognition of the fact that in the communist reconstruction of society the proletariat alone counts as a class.<sup>25</sup> This dictatorship, however, is designed not only to perform the negative task of crushing the old order of capitalism, but also the work of constructing a new society which is to function not in the government of persons but in the management of production and distribution. The proletarian dictatorship is viewed by the Communist as a necessary but temporary expedient in effecting the transition from capitalism to

<sup>24</sup> *Ibid.*

<sup>25</sup> *Ibid.*

communism. Out of the disorder and chaos of the disrupted capitalist régime the revolutionists believe there will arise the complete structure of a new social order of communist socialism—industrial self-government of the communistically organized producers. When this structure is perfected, which implies absolute economic and political expropriation of the bourgeoisie, the dictatorship is to end. To understand the Communists' justification of this ruthless *ad interim* dictatorship one must recall that to them the state is a symbol of intimidation and coercion, functioning always in the interest of the ruling class. Thus, with the conquest of political power by the workers who become the dominant authority, political rights and recognition are denied the bourgeois class.<sup>26</sup> During the transition from capitalism to communism, therefore, democratic government as it is generally interpreted cannot obtain; rather must there be a proletarian autocracy.

All this prompts the query: who constitutes the proletarian class? The term proletariat as used by the Communists refers to that class of persons which is dependent for its livelihood upon selling its labor power to the owners of industry.<sup>27</sup> The professional and skilled classes receive little consideration, and are very likely classified with the *petite bourgeoisie*. It is the unskilled who are the real proletariat in Communist terminology, for the skilled and professional groups think in terms of their craft, of individuals and their property, while the unskilled—the standardized product of modern industry—think in terms of the mass. "The Social Revolution can be carried through only by the industrial proletariat of unskilled labor, in spite of and acting against all the ideas and activity of *all other social groups*."<sup>28</sup> And again, "The machine proletariat of average unskilled labor constitutes the typical proletariat in the Marxian sense," and "constitutes the material basis of Socialism."<sup>29</sup> Marx and Engels, it will be recalled,

<sup>26</sup> Fraina, *op. cit.*, pp. 214, 217.

<sup>27</sup> Mr. C. E. Ruthenberg, Executive Secretary of the Communist Party, in a letter to the writer, November 20, 1919.

<sup>28</sup> Fraina, *op. cit.*, p. 137. The italics are ours.

<sup>29</sup> Fraina, *op. cit.*, p. 143.

thought of the proletariat as the class of modern wage-laborers who, having no means of production of their own, are reduced to selling their labor-power in order to live.<sup>30</sup> As the American Communists interpret the term "wage-laborers," it applies evidently only to the unskilled in industries and agriculture.

Beyond the period of the proletarian dictatorship the program of American communism does not provide a definite form of social structure. Not an outline of the future society, but a program of action is the present purpose of communism. To attempt to describe the structural and functional aspects of the new social order, other than those indicated in the form of organization created to wage the class struggle, would be utopian, say the Communists. It is expected that the framework of the new society will be made during the transition, under the surveillance of the ruling proletarians. The norms of the communist order will evolve in this period. At first industrial administration will function through general organizations known as councils of workers. These administrative units are to be integrated and adapted to industrial divisions. It is at this juncture that industrial unionism is to function, becoming the basis of the new communist society, together with such other administrative agencies as may prove necessary to coördinate the nonindustrial activities of the people. "Each industry will constitute a department of the industrial state; the workers in each industry will organize in local councils and these unite into general industrial councils coördinated with other general industrial councils into a central administration of the whole productive process."<sup>31</sup> The function of the central administration is to be directive, not repressive; positive, not negative, coördinating and guiding the machinery of production and distribution. The distribution of the product is to be determined ultimately on a purely communistic basis: *from each individual according to his ability, to each according to his needs.*<sup>32</sup>

<sup>30</sup> *The Communist Manifesto*, translation by Mr. Samuel Moore, p. 12.

<sup>31</sup> Fraina, op. cit., p. 220.

<sup>32</sup> Cf. *Ibid.*

This is identical with the program of Russian bolshevism. The Bolsheviks, it will be remembered, have two general forms of organization: the All-Russian Council of soviets with its executive committee and people's commissars, and the Supreme Council or commissariat of public economy. The functions of the former are political in their character, constituting the political government of Bolshevik Russia during the period of reconstruction. Police powers to preserve order within, control of the army and navy to protect the soviet republic from external and internal enemies, administration of the foreign affairs of the commune, and the adjudication of appeals in industrial matters, are some of the functions performed by the soviet administrative units, coördinated in the All-Russian Council. With the defeat of the enemies of the commune and the completion of the socializing process this political machinery will cease to function. The Supreme Council of Public Economy administers the industrial affairs, such as determination of wages, apportionment of output, distribution of rations, insurance and relief of workers, technical education, and recreation.

As in Russia, the proletarian dictatorship devised by American communism is to be a temporary makeshift created to dispose of counter-revolutionary movements. As the political machinery of the *ad interim* period completes its work, that is, when the opposition of the bourgeoisie is broken, the dictatorship of the proletariat will disappear and with it the political state and all its class distinctions. The basis of the communist society will be industrial, not territorial, and its constituents, therefore, will be the organized producers. The other elements of the population—the *petite bourgeoisie*—will participate and function in this new proletarian order only as they are absorbed into the industrial structure and become useful producers.<sup>33</sup> The communist society, it is contended, will be undemocratic only to those who are not proletarians. Within the communist structure itself all are to become proletarians and productive labor will be the basis of franchise.

<sup>33</sup> Fraina, op. cit., p. 217.

The philosophy and program of American communism invites adverse criticism at several points. First, its disregard of parliamentary action and its opposition to legislative reforms are unfounded denials of the efficacy of the ballot in improving the status of the workers and other classes in society. It is conceded that social reform has failed to usher in a proletarian millennium, but this does not constitute proof of the futility of legislative reforms. The history of social legislation is replete with splendid achievements of parliamentary action in behalf of the workers. Communism's rejection of pragmatic opportunism seems unwise in a country like the United States, where with effective political organization much can be done to defend the interests of the so-called proletariat.

In the second place, the egalitarian philosophy, out of which springs the dictum "from each person according to his ability, and to each according to his needs," has never been generally accepted as practicable, and its adoption in this country is very unlikely. A system of "distributive justice" that is based upon needs rather than upon contributive effort is to many persons not justice at all, but expropriation of the industrious and efficient for the benefit of the inefficient and indolent. Such a system of distribution would very likely destroy the initiative and enterprise that have constituted the potent forces in social progress.

Third, it is difficult to justify, even as a temporary expedient, the autocratic proletarian dictatorship by a revolutionary minority who, during the transition from capitalism to communism, are to deny all rights and privileges to the other classes of society and permanently expropriate them. The refusal to permit the organization of a constituent assembly to determine the structural and functional aspects of the new society is the antithesis of the Anglo-Saxon concept of democracy.

Finally, the abolition of the political state seems a presumption in favor of anarchism. To abolish parliamentary government of persons and establish in its stead a management of industrial processes presumes that the production and distribution of wealth are entirely divorcible from persons as producers and distribu-

tors. Unless the human factor in these processes can be standardized to react altruistically, authority must be delegated to some person or body of persons to compel obedience, or else order will be replaced by chaos and anarchy. Anarchism is the negation of all authority, whether political, economic, or religious; communism accepts unlimited state power and authority during the transition from capitalism to communism, beyond which all government of persons is to cease.<sup>34</sup> If in their future society the Communists propose to continue the industrial councils of the transition period, it is difficult to see how there can be government of things apart from government of persons. Moreover, should the Communists, during their reconstruction of society, find that the continuation of political councils like the soviets is a prerequisite to order and progress, it is highly probable that these councils would be no more democratic and truly representative of the entire population than political caucuses and legislative committees have been under the present system. Delegated authority, under communism, which would seem imperative for the maintenance of order, would doubtless be open to the same danger of abuses of power as now obtains under their arch enemy—"Capitalistic Parliamentarism."

Despite the destructive character of its program, the uncertainty and vagueness of its plans for the future social order, and the unsoundness of many of its doctrines, American communism is gaining a large following among the industrial workers and promises to become an important influence in our political and economic life. For these reasons it commands the thoughtful consideration of every student of political and economic philosophy.

<sup>34</sup> Cf. "The Russian Revolution," by N. Lenin, *The New International*, June 30, 1917, and *Revolutionary Socialism—A Study in Socialist Reconstruction*, by Louis C. Fraina.

## THE NEW GERMAN CONSTITUTION

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To understand the real nature of the government which now, under its new constitution, is attempting to guide the German nation through the perils of reconstruction is indeed a baffling problem. We are as yet too close to the events which brought it into existence and clothed it with constitutional forms to attempt their evaluation or to determine their significance. The revolution was so unlike what we should have expected as necessary to shift the ultimate power in the state from a narrow military and landed oligarchy to the masses of the people, that a doubt forces itself upon us as to its genuineness. The war, with its shattering of national ideals, its appalling toll of life, the grinding misery which it imposed, and the insuperable financial bondage to which it condemned the nation for an indefinite future, might account for a thorough popular disillusionment which would sweep the nation into the current of democracy. But if this were the case, we would expect a general enthusiasm for the new government, an evident popular sense of the passing of the dark night of autocratic rule and a joy in the light of a new and happier day.

This is exactly what does not exist. There are three classes in Germany today. The first, who constitute only a small minority, are the nationalists and militarists who are bitterly opposed to the republic, and even now are agitating at every favorable opportunity for the restoration of the monarchy in its old form. The second class are likewise a comparatively small minority. They are the revolutionaries, the Spartacists with some of the Independent Socialists, who are just as strongly opposed to the government, using wherever possible the instruments of direct action to inaugurate the revolution which they



believe has not yet been achieved. The vast mass of the nation appear to be utterly indifferent with respect to forms of government. Any régime which makes life easier, gives them something to eat and protects them from civil war, commands their temporary support. They are essentially opportunists awaiting the turn of events. Of real adherents on principle to republican, parliamentary, genuinely democratic government, there appear to be very few in Germany today. It is upon this uncertain and precarious basis of public opinion that the existing German government has been created and is maintained. //

The revolution in Germany falls thus far into four phases: The first covers the period from October 3, 1918, when Prince Maximilian of Baden was appointed to the chancellorship, to November 9, when the Kaiser abdicated and the provisional government under the chancellorship of Friedrich Ebert was established. Decisive military defeat made it evident that the war was approaching a speedy and disastrous conclusion. A desperate effort was, therefore, made to introduce such liberal measures as would satisfy the demands of the allied powers and conciliate the widespread revolutionary forces in the nation. For the first time in the history of the empire several Socialists were included in the government. Reforms which progressives had been demanding in vain for decades were now instituted over night, and in form the German constitution became as liberal as England's. It was, however, too evidently a deathbed repentance, and as such it came too late. This phase may be called the bourgeois revolution.

A second phase is that of the provisional government under Ebert as chancellor, which extends from November 9, 1918, to the convening of the National Assembly on February 6, 1919. The government was in the hands of the majority Socialists, though there was little change in the personnel of the higher administrative posts. Under the law of November 30, which provided for universal manhood and womanhood suffrage and proportional representation, elections were held for the National Assembly. The government, recognizing its provisional character, and that it possessed no mandate from the people, under-

took merely to hold things together until the assembly should convene.

The third phase extends from the meeting of the assembly to the promulgation of the constitution on August 13. The Assembly at once adopted a provisional constitution, under which Ebert was chosen President of the Republic, and, in turn, appointed Philip Scheidemann chancellor. A ministry made up, with one exception, of majority Socialists and Centrists, was organized, and the government assumed a more regular and legal character. Supported by a substantial majority in the National Assembly, it was now able to take a more positive and constructive attitude toward the problems of reconstruction which were pressing for solution. Scheidemann, who opposed the acceptance of the terms of peace offered by the allies, was forced to retire on June 20, and a new ministry under Gustav Bauer was installed. This change, however, in no wise affected the general character of the government which continued to rest upon the support of the majority Socialist-Centrist coalition in the National Assembly.

With the promulgation of the constitution on August 13, the present phase of the revolution in Germany was ushered in. Ebert took the oath of office under the new and definitive constitution as President of the Republic, and the Bauer ministry was continued. No change in policy or personnel was occasioned by the putting into force of the new fundamental law. The National Assembly, which had thus far functioned as a constituent body, now assumed the rôle of the regular Reichstag. What had previously been provisional now became in every respect regular and legal.<sup>1</sup>

Interesting comparisons might be drawn, did space suffice, between the National Assembly which has framed the present constitution of Germany and other constituent bodies. So far as we can judge from the meager reports which have reached us of its deliberations, it was not marked by the lofty ideals, the

<sup>1</sup>The new constitution was discussed on first reading late in February and early in March, in commission from March to June, on second and third reading from July 3 to 31, and was adopted by a vote of 262 to 75.

elevated conceptions, the ardent enthusiasm, which characterized the French national assembly of 1789, and even the Frankfurt parliament of 1848. Nor is there evidence of the masterly statesmanship which was so signally displayed by the American constitutional convention of 1787. One figure alone stands out prominently, that of Professor Hugo Preuss, whose individual work the constitution is supposed in large measure to represent. The membership of the assembly was chiefly composed of men who had served in the old Reichstag, politicians of very ordinary and mediocre ability. Nor was the assembly guided or inspired in its work by any general popular discussion. It confronted throughout its deliberations a persistent and deadly indifference on the part of the press and the people. Convened at the quiet little town of Weimar instead of Berlin, in order to remove it from the scene of Spartacist activities, it attracted little attention. Public opinion was concentrated on the questions connected with the peace treaty, the problems of public finance and reconstruction, and the machinations of the monarchical and Spartacist factions. To the work of determining the new framework of government, no one gave special thought.

Under these circumstances it is rather remarkable that so satisfactory an instrument should have been produced. It is in many respects crude; it lacks the polish and form which we generally expect to discover in a national constitution. It shares the fault of many modern constitutions in being too long, and in incorporating too many detailed provisions on relatively unimportant matters. At the same time it leaves many important matters to be determined by subsequent organic laws, which it provides shall be enacted. It contains a considerable number of general statements of fact as well as some doctrinaire and ideological principles. It is in some particulars ambiguous. And it is burdened with a large number of temporary provisions. Nevertheless, when full account is taken of all its defects, it still appears to be a practicable and fairly satisfactory instrument of government.<sup>2</sup>

<sup>2</sup> The Constitution, translated by Professors W. B. Munro and A. N. Holcombe of Harvard University, has been published by the World Peace Foundation, Boston, Mass., and can be obtained on application.

The constitution contains a preamble and 181 articles. It is broadly divided into three parts: *first*, composition and functions of government; *second*, fundamental rights and duties of Germans; *third*, transitory and final regulations. Under composition and functions of government, there are seven subdivisions, as follows: the national government (*Reich*)<sup>3</sup> and the states; the Reichstag; the President of the Republic and the ministry; the Reichsrath; national legislation; national administration; and the administration of justice. The part dealing with the fundamental rights and duties of Germans falls into divisions on the individual; the social life; religion and religious societies; education and the schools; and the economic life.

The preamble states that "The German people, united in all their branches and inspired by the determination to renew and strengthen their domain in liberty and justice, to preserve peace, both at home and abroad, and to foster social progress, has adopted the following constitution." The principle of popular sovereignty is further emphasized in Article 1, which states that "The German nation (*Reich*) is a republic," and that "Political authority is derived from the people." The constitution was, however, not submitted to a popular referendum for ratification. The territory is stated to consist of the territories of the German states. Annexation of other territory may be effected "by a national law, if their inhabitants, exercising the right of self-determination, shall so desire."

The legislative competence of the national government is determined in a long enumeration of powers. It is considerably more extensive than that exercised by the imperial government under the old constitution. The special rights of the south German states are swept away. Such matters as the relations

<sup>3</sup> There is an obvious difficulty in the translation of the German word *Reich*, which is repeatedly used in the new constitution. Its former significance as "Empire" is confusing. To speak of the national republican government of Germany as an empire would give this term a meaning which it has hitherto not carried in English. The terms "domain," "nation" and "national government" have been used as equivalents. The term "commonwealth" has also been suggested, as expressing very nearly the idea which the German word *Reich* embodies.

of church and state, land tenure, theaters and cinematographs, disposal of the dead, and the general control over public instruction are now placed within the field of national legislation. The national government, moreover, is given an unlimited power of taxation and thus freed from the necessity of relying upon matricular contributions from the states. There is thus exemplified the centripetal and unitary tendency so noticeable in all federal governments. The states enjoy the right of legislation in many of the matters included in the enumeration of national powers, so long as the national government does not exercise them, but such state laws are subject to a federal veto. The administration of national laws is generally left in the hands of state officials, as under the old constitution. A republican form of government must exist in every state, the people's representatives being chosen by universal, equal, direct, and secret vote cast by all German citizens, men and women, on the basis of proportional representation. The same system must also be employed in connection with all local elections. Ministerial responsibility to the representative body is also made a fundamental principle of every state government.

A change in the boundaries of states can be effected by ordinary national legislation, when the states directly concerned agree, or when the population affected demands it by referendum and a predominantly national interest requires it. Otherwise a change can only be accomplished by a constitutional amendment. No change in the existing state boundaries may be made, however, within two years from the promulgation of the constitution. In a memorandum submitted by Professor Preuss previous to the meeting of the National Assembly, he urged the breaking up of Prussia into a number of smaller states. This obviously desirable proposal appears to have received little popular support except in the Rhineland. The separation of this province from Prussia and its establishment as an equal member state in the federation is loudly demanded by the people, who are greatly angered by the constitutional provision which postpones for two years the accomplishment of their desire for separation. This provision was doubtless inspired by

the alleged machinations of France in the Rhineland and the Palatinate. It is believed that France is working for the establishment of an independent buffer state, toward which the separation of the Rhineland from Prussia would be the first step.

Under the new constitution the Reichstag remains the representative body for the German nation as a unity. The provision in the old constitution which absolves the members from obedience to instructions from their constituents is retained. They are to be chosen by universal, equal, direct and secret, manhood and womanhood suffrage on the basis of proportional representation. Their term is shortened from five to four years. Annual sessions are required. The President of the Republic may dissolve the body, but only once for the same cause. He is not limited, as was the Emperor, in this power by the necessity of securing the assent of the Bundesrath. New elections must be held within sixty days after dissolution of the Reichstag or the expiration of its constitutional term. The Reichstag is not made the judge of its own elections, but this power is vested in a court of election control consisting of members of the Reichstag, chosen by the body for the entire term, and of the highest national administrative court, appointed by the President of the Republic on nomination of the president of the court. Decisions are to be based upon public oral hearings. Members of the Reichstag enjoy the usual privileges of freedom from arrest and irresponsibility for their votes and the expression of their opinions in connection with the discharge of their functions, except by the body itself.

The provisions regarding the President of the Republic are comparatively brief. He is chosen by the whole German people, and must have completed his thirty-fifth year. Further details concerning his election and qualification are left to subsequent legislation. His term of office, seven years, is what the French would call a *septennat personnel*. If a vacancy occurs, a new president is elected for a new period of seven years and not for the unexpired term. Pending such election, or in case of temporary incapacity, the chancellor performs the functions of the office. The President is not subject to prosecution except with

the sanction of the Reichstag. The provision for his removal is unique. On proposal by two-thirds of the Reichstag he is subject to recall by popular vote. During the period between the vote of the Reichstag and the referendum, he is not permitted to exercise the functions of the office. In case the referendum sustains the President, it counts as a new election for the constitutional term of seven years and automatically entails the dissolution of the Reichstag.

The powers of the President include the representation of the nation in matters of international law, the accrediting and receiving of ambassadors, and the conclusion of treaties and alliances; but declarations of war and the conclusion of peace require national legislation, and alliances and treaties relating to subjects covered by national law require the approval of the Reichstag. The President possesses the power of appointment and removal of officials in the civil and military service, and may delegate this power to other officials. He has supreme command of the military forces of the nation. He may use the armed forces to compel a state to perform its constitutional or legal duties. When public security and order are disturbed and armed intervention becomes necessary, he may suspend the constitutional guaranties of personal freedom, the secrecy of the post, telegraph and telephone services, the right of assembly, the right of association, and the right to the possession of private property; but in these cases his action must be immediately reported to the Reichstag which may revoke them. The pardoning power is vested in the President but general amnesties require a national law.

Provision is made in the constitution for a ministry of which the chancellor is the head. The chancellor is appointed by the President, and the other ministers by the President on nomination of the chancellor. They are removable by the President, the chancellor's consent being necessary to removal as to appointment in the case of subordinate ministers. The model of the Prussian *Staatsministerium*, rather than that of the chancellorship of the imperial constitution in the old régime, is followed in the organization of the ministry. The chancellor does not

occupy the supremely predominant position in the new government which Bismarck created for himself in the old constitution. He is merely *primus inter pares*. He presides at the meetings of the ministry in accordance with an order of business adopted by the body itself and approved by the President. The decisions of the ministry are determined on the basis of a majority vote, the chancellor's vote deciding in case of a tie. He determines the general lines of government policy, within which, however, each minister conducts his department independently. All drafts of law, all matters so prescribed by the constitution or law, and all differences of opinion over questions which concern the functions of several departments are required to be laid before the ministry by its members for discussion and decision.

Ministerial responsibility to the Reichstag is provided in a number of separate and scattered articles. All acts of the President require the countersignature of the chancellor or of a minister who thereby assumes responsibility for the same. It is specifically provided that the chancellor and ministers shall possess the confidence of the Reichstag; any of them must resign upon an explicit resolution of that body withdrawing this confidence. Responsibility is, under the constitution, individual and not collective. The chancellor is made responsible for the general lines of government policy and the other ministers for the conduct of their several departments. It is, however, more than likely that the force of circumstances will develop a conventional collective responsibility, and that an adverse vote of the Reichstag will entail the resignation of the entire ministry. Ministerial solidarity is a corner stone of parliamentary government, and it is scarcely conceivable that Germany's political evolution will follow a different course in this respect than that of other countries which have this system.

The President is not permitted to be a member of the Reichstag, and there is no provision requiring that the ministers shall be members. The Reichstag or any of its committees may, however, require the chancellor or any of the ministers to appear before it. They also have the right of access, on their own demand, to the Reichstag or any of its committees. The only



means of enforcing ministerial responsibility contained in the constitution are the right of *enquête* and penal action which may be considered as a form of impeachment. The Reichstag has the right and, on the demand of one-fifth of its members, the duty to appoint committees of investigation. Administrative and judicial officials are required to supply such committees with all information which they may demand. The Reichstag is further empowered to make a complaint before the national supreme court against the President, the chancellor or the ministers on the ground of their having violated the constitution or a national law. The details of procedure and penalties are left to legislation. If the government under the constitution endures, these provisions regarding ministerial responsibility will doubtless be supplemented by conventions which will give the institution the character it possesses in other parliamentary systems.

The Bundesrath of the old régime is transformed into a Reichsrath, chosen on a different basis and with reduced powers. It remains, however, the representative body of the German states in national legislation and administration. Every state has at least one vote. The larger states are given one vote for each million of inhabitants or fraction thereof equal to the population of the smallest state. But no state shall be represented by more than two-fifths of all votes. The states are represented by members of their respective governments, but one-half of the Prussian votes are to be disposed of by the Prussian provincial assemblies. Thus, while the representation and relative weight of Prussia will be considerably increased, this provision will materially diminish the hegemony which the Prussian government would otherwise possess, and doubtless represents a concession to the demand for a division of Prussia into several separate states. There will be a new apportionment of votes following each decennial census.

Clause 2 of Article 61 of the constitution, which provides that German Austria after its union with the German nation shall be represented in the Reichsrath, and until such union representatives of German Austria shall have a deliberative voice in that body, was held by the Peace Conference to be in conflict

with Article 80 of the peace treaty, which provides that Germany shall acknowledge and respect the independence of Austria and shall agree that Austrian independence is inalienable save with the consent of the League of Nations. A demand that this clause in the German constitution be annulled was at once made by the Peace Conference. It was pointed out by the German government that Article 178 of the constitution contains the explicit statement that "The arrangements provided in the peace treaty signed on June 28, 1919, at Versailles are not affected by the constitution." Moreover, Germany in her counter-proposals to the original peace terms explained, in discussing this point, that she had no desire to violate the Austrian frontier, but that if Austria wanted to bring about a state of unity with Germany, the latter could not obligate herself to oppose the wishes of the "German brothers in Austria," for in that case the right of self-determination of peoples would count against Germany. In the answer of the allied governments to the counter-proposals it was merely recognized that Germany did not want to violate forcibly the Austrian frontier, and the implication was, therefore, clear that everything was left to the free initiative of Austria on the basis of national principles and national self-determination. Germany also complained of the manner in which the question was raised which amounted practically to an ultimatum. The Peace Conference remaining firm, however, in its demand, the German government complied and the clause was annulled.

It is provided that in committees of the Reichsrath no state shall have more than one vote. The ministry is required to summon the Reichsrath on demand of one-third of its members. The Reichsrath, itself, and all of its committees are presided over by a member of the ministry, and ministers have the right of initiative of proposals and of participation in all of its deliberations and in those of its committees. Members of the Reichsrath enjoy the right of appearing and of presenting the views of their state governments before the Reichstag.

The initiative of legislation is vested in the ministry and in the Reichstag, but all measures proposed by the ministry must

have been first submitted to the Reichsrath. If the latter disapproves a proposal, its dissent must be recorded in connection with the submission of the measure to the Reichstag. The Reichsrath, itself, cannot submit legislative proposals to the Reichstag, but the ministry is bound to submit any project of law which the Reichsrath proposes, but may accompany it with an exposition of its own views. The Reichsrath possesses a veto on all measures passed by the Reichstag, which must be exercised within two weeks and confirmed within a further period of two weeks. A measure vetoed by the Reichsrath may be re-passed by the Reichstag by a two-thirds majority.

It will thus be seen that the legislative power of the Reichsrath is very much less than that possessed by the old Bundesrath. The tables have been turned for the two chambers, and from being the predominant partner in legislation the body representing the states sinks to a position even less important than that of the house of lords in England. It is given only a suspensive veto which can be over-ridden whenever there is a strong majority in the popular body. The Bundesrath was the strongest bulwark of autocracy; through it, more than through any other agency, the Kaiser was able to exercise an unlimited power. This change should, therefore, insure the domination of the people's representatives in the German government.

Provision is made in the constitution for both the initiative and referendum. The President has the right of invoking the referendum on any measure which has been enacted by the Reichstag, including those which have been passed over the veto of the Reichsrath. The referendum may also be invoked in another manner. All laws ordinarily come into force on the fourteenth day after publication by the President, but on demand of one-third of the members of the Reichstag this publication may be deferred for two months. If, during this period, one-twentieth of the qualified voters demands it, the measure must be referred to the people. A majority of the qualified voters must participate in the referendum election in order to nullify an act passed by the Reichstag. Any laws declared by the Reichstag and the ministry to be urgent are not subject to post-

ponement and the referendum, and the President alone may invoke the referendum on matters concerning the budget, tax laws and salary payments.

A legislative proposal may be initiated by one-tenth of the qualified voters. A fully elaborated draft bill must be the basis of such a demand. The ministry is required to lay such an initiative proposal before the Reichstag, explaining its own views thereon. If the Reichstag approves, it becomes law; otherwise it is submitted to the popular vote.

Amendments to the constitution follow the procedure of ordinary legislation, a two-thirds majority in a session of the Reichstag in which two-thirds of the members are present being necessary. Constitutional amendments may also be made through the popular initiative, but in this case a majority of all qualified voters is necessary.

The section of the constitution dealing with national administration contains a variety of provisions, many of them rather detailed, relating to the conduct of foreign relations, national defense, colonial administration, the merchant marine, the customs service, the collection of taxes, the formulation of a budget, the auditing of accounts, the borrowing of money, the postal and telegraph service, the socialization and administration of the railroads and waterways, and the control of sea signals. These provisions are, in most cases, of such a nature that they might more properly have been left to statutory enactment.

It will be remembered that the old constitution contained no provision whatever on the subject of the administration of justice, and that the German courts rested entirely upon statute. The present constitution previews a system of regular and of administrative courts, both state and national. The independence of the judiciary is secured by the provision for a life tenure, and that judges may not be removed from office or transferred or retired against their will, except by virtue of a judicial decision and on the grounds and by the forms provided by law. The law may, however, fix an age of retirement. Extraordinary courts are declared to be illegal, and no one may be removed from the jurisdiction of his legal judge. It is made the duty of

administrative courts to protect the individual against the acts of administrative officials.

The fundamental rights of the individual, as defined in the German constitution, are generally those found in other bills of rights, but provisions for exceptions to be prescribed by law accompany some of them. Equality of all Germans before the law, equal civil rights and duties of men and women, the suspension of all public advantages and disadvantages due to birth and rank are fundamental constitutional guaranties. Titles of nobility, and orders and insignia of orders, may no longer be bestowed, and titles now existing are to be accepted only as part of a name. The acceptance of foreign titles and orders is likewise forbidden.

Citizenship, and its acquisition and loss, are matters of national law. Discrimination by a state against citizens of other states is forbidden. The right of freedom of travel, of sojourn, of settlement, the acquisition of real property and the pursuit of every means of livelihood anywhere within the nation are guaranteed. The right of emigration from Germany may be limited only by national law. The right of protection of all citizens as against foreign countries is guaranteed both within and without the national boundaries. There is an explicit prohibition against surrendering any citizen to a foreign government for prosecution or punishment. Racial minorities are protected in the use of their mother tongue for instruction, or in matters of internal administration or the administration of justice.

Deprivation of personal liberty is permitted only in accordance with law, and persons deprived of their liberty are entitled to be informed, at the latest on the following day, by what official and on what grounds their liberty has been impaired. The home of every German is declared to be his place of refuge and cannot be violated, though exceptions may be prescribed by law. No person may be punished for an action, punishable by law, before the act has been committed. The secrecy of the postal, telegraph and telephone services is guaranteed, though the law may prescribe exceptions. Within limits, prescribed by law, the right of freedom of expression of opinion by word, writ-

ing, printing, by picture or in any other way is secured. It is explicitly forbidden to restrict this right on the basis of one's labor or employment. Censorship is forbidden except in the case of moving pictures, or for the purpose of combating obscene and indecent literature, or for the protection of youth at public plays and spectacles.

Social rights guaranteed by the constitution, or in regard to which it is directed that legislation shall be enacted, include compensating families with numerous children; protection of motherhood; equal opportunity for physical, mental and social development for illegitimate as for legitimate children; protection of youth against exploitation, and provision for their adequate moral, mental and physical security; freedom of assembly; freedom of association; liberty and secrecy of the suffrage; the right of petition; the right of communal self-administration; freedom from restrictions, such as those based on sex, in regard to officeholding; a life tenure for state employees; the right of civil officials to freedom of political belief and of association; and the right of the individual to reparation by the state for violations of his rights by an official, against whom the state may, however, bring a counter-action. The social duties of citizens are the acceptance of honorary office; the performance of personal services for the state and community; the duty of military service; and the contribution of a just share to the financial support of all public burdens.

Complete freedom of religious worship and of conscience is guaranteed by the constitution. The enjoyment of civil rights and the performance of civic duties may not in any manner be conditioned upon religious beliefs. No one is to be required to perform church duties or attend church exercises or festivities, or take a religious oath. There is no established church and freedom of organization for religious purposes is secured. Religious societies enjoy the right of freely regulating and administering their affairs, within the limits of the law. Such religious bodies as already enjoy the status of public law corporations, and such others, to be organized, as afford a guaranty of permanency, possess the character of public law corporations, and

are entitled on the basis of the civil tax lists to raise taxes subject to regulations by state law. All state contributions to religious societies shall cease, but all property rights of religious bodies are guaranteed. Sunday and state holidays are protected as days of rest and spiritual development. Provision must be afforded for the performance of religious duties in the army and in public institutions, but no compulsion is to be exercised.

The section of the constitution on education and the schools is manifestly the result of compromise, the majority Socialists and the clerical Centrists having the most widely divergent views on this subject, and particularly on the question of religious instruction in the schools. Art, science and teaching are declared to be free. Education is a function in which nation, state and community coöperate. Compulsory school attendance is required. A basic system of eight years instruction and a system of continuation schools up to the age of eighteen is to be maintained at public expense. For the continuation, or middle and higher school system "the rule for guidance is the multiplicity of life's callings, and the acceptance of a child in a particular school depends upon his qualifications and inclinations, not upon the economic or social position or the religion of his parents." General religious instruction is to be included in all public schools, except those where the communities desire education to be completely secular. Schools of a particular religious faith or *Weltanschauung* may be established in communities where there is a demand for them, subject to regulations to be prescribed by law. State assistance is to be provided to those in poor circumstances for attendance at middle and higher schools, with special attention to those children regarded as adapted for education. Private schools as a substitute for public schools require the approval of the state, which may not be accorded unless the standards of scientific education of the teaching staff and the equipment of the schools are equal to those of the public schools, and they must, furthermore, be organized on a democratic basis. Even then, private schools are to be permitted only when there is no public school in the community of the same faith, or when the educational administration recognizes a particular pedagogical interest.

The control of economic life is based upon the principle of justice, with the object of "assuring a life worth living to all." Freedom of trade and business, and freedom of contract are secured, usury is forbidden, and property is safeguarded and may be taken for public purposes only by due process of law. The right of inheritance is guaranteed, but the state's right to a share in the inheritance is recognized. It is made the duty of the state to regulate the possession and use of land in order to promote the possession by each family of a healthful dwelling. Entails are abolished. The unearned increment in the value of land is to serve the community's interest. The state is to control all natural resources. Complete socialization or public control of private economic enterprises which are adapted to the purpose is definitely placed within the competence of the state by national legislation. The administration of such enterprises may be undertaken by the nation, by a state or by a local community. Labor is placed under the special protection of the nation and a uniform system of labor laws for the entire country is to be enacted. Adherence of Germany to the principle of an international labor code is also asserted. Protection is afforded intellectual labor, and the rights of the discoverer, inventor and artist are secured. The right of organization for the defense and promotion of the interests of labor is absolutely guaranteed. It is made the duty of the national government to establish a comprehensive system of industrial insurance.

The soviet idea of an economic organization paralleling the political organization of the state, and sharing with it the functions of government, finds lodgment in the constitution. It is asserted that "Wage earners and salaried employes are qualified to coöperate on equal terms with employers in the regulation of wage and working conditions as well as in the entire economic development of the productive forces." Legal recognition is given to factory workers' councils which are understood to be organizations of all the workers in single factories. Provision is made for their organization in economic districts under district workers' councils, and there is to be finally a national workers' council. The district workers' councils and the national



workers' council are to meet with representatives of employers in what are called district economic councils and a national economic council, "for the purpose of performing joint economic tasks and coöperating in the execution of the laws of socialization." The various trade groups are to be represented in the district and national economic councils according to their economic and social importance. All drafts of laws of fundamental importance relating to social and economic matters are to be submitted by the national government to the national economic council for its opinion before presentation to the Reichstag. The national economic council has also the right of proposing laws which must be submitted to the Reichstag, and of presenting its views to that body through one of its members. Powers of control and administration in the field of their interests may be conferred upon workers' and economic councils. The building up of the workers' and economic councils, and the definition of their relations and duties is made a definite duty of the national legislative body.

The weal of a nation or even the success of a government is not chiefly determined by the character of the constitution which it may adopt. Very much depends upon other things. The economic and social conditions are fundamental. The national political psychology counts for much. Certainly inherited political traditions, ingrained political habits and methods, the strength and intelligence of a broadly based public opinion are often decisive factors. And the presence or absence of a wise and statesmanlike leadership may often be the conditioning circumstance in determining the line of a nation's progress. We in America are learning the fatuousness of relying upon the principle of "a government of laws and not of men." It is these elements in the situation in Germany which are most difficult to gauge. Political opinion is still largely amorphous, and leadership is yet unestablished. Will a genuine faith in democracy succeed in taking root in the minds and hearts of the German people; or will they dumbly submit to the reëstablishment of an autocratic and oligarchical rule; or, maddened and

desperate in the full realization of the utter collapse and failure of all their previously cherished ideals and principles of life, will they fall under the dazzling spell of an incendiary bolshevism? Who can say? And yet the adoption of a constitution which, while far from perfect, still reflects so clear a conception of fundamental needs and a political philosophy so moderate and sane affords distinct hope and encouragement that the German nation may emerge from the present situation a fit member of the sisterhood of democratic states.

## CONSTITUTIONAL LAW IN 1918-1919. II

### THE CONSTITUTIONAL DECISIONS OF THE SUPREME COURT OF THE UNITED STATES IN THE OCTOBER TERM, 1918

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#### VI. TAXATION

Several of the cases already considered under the commerce clause involved further questions under the Fourteenth Amendment. Georgia's misuse of the mileage ratio in applying the unit rule to the taxation of wandering cars was found so arbitrary as to violate the requirement of due process.<sup>75</sup> The minority insisted that "the case presents no question of taxing a foreign corporation with respect to personal property that never has come within the borders of the state." This was not specifically denied by the majority who seem to base their decision on excessive valuation of property within the jurisdiction rather than on taxation of property outside the jurisdiction. Yet in substance the case is one of taxing extra-state values though not extra-state tangible objects.

Missouri's excessive fee for certificates authorizing the issue of bonds secured by railroad property within the state, which was held an unconstitutional regulation of interstate commerce,<sup>76</sup> was alleged by complainant to be a violation of the Fourteenth Amendment as well. The opinion of the court did not pass on the due-process question, but the cases cited under the commerce clause relied also on the Fourteenth Amendment. The St. Louis tax on manufacturers, measured by the amounts received for the sale of goods produced within the city, wherever such sales occurred, was held to be a tax on manufacturing within the city and not on property or business transactions without the state and therefore not obnoxious to the Fourteenth Amendment.<sup>77</sup>

<sup>75</sup> *Union Tank Line v. Wright*, (1919) 249 U. S. 275, 39 Sup. Ct. 276, 13 *American Political Science Review* 614.

<sup>76</sup> *Union Pacific R. Co. v. Public Service Commission*, (1918) 248 U. S. 67, 39 Sup. Ct. 24, 13 *American Political Science Review* 611.

<sup>77</sup> *American Mfg. Co. v. St. Louis*, (1919) 250 U. S. 459, 39 Sup. Ct. 522, 13 *American Political Science Review* 612.

In *Mackay Telegraph & Cable Co. v. Little Rock*<sup>78</sup> a company which was subjected to a license tax on poles located on a private right of way thought it was denied the equal protection of the laws because some of its competitors had not been similarly hit. But the court thought that for all that appeared the alleged discrimination might be fortuitous or temporary, and denied relief in the absence of offers "to show an arbitrary and intentionally unfair discrimination in the administration of the ordinance" or that the circumstances of the several companies and their telegraph lines were so much alike as to render any discrimination in the application of the pole tax equivalent to a denial of the equal protection of the laws."

The due-process claim advanced in *Wells Fargo & Co. v. Nevada*<sup>79</sup> was founded on an allegation that the assessment complained of was made without giving the taxpayer notice and an opportunity to be heard. It appeared, however, that under the Nevada procedure payment of the tax could not be enforced until after a judgment obtained in judicial proceedings "wherein process issues and an opportunity is afforded for a full hearing." In accordance with established precedents, this was held to satisfy the requirements of due process.

Absence of notice and hearing was also complained of unsuccessfully in three cases upholding special assessments. All were declared by the court to be governed by the principle that "where the Legislature fixes by law the area of a sewer district or the property which is to be assessed, no advance notice to the property owner of such legislative action is necessary in order to constitute due process of law." In each case the municipality was found to possess legislative authority in the premises so that the cases came within the general rule. This conclusiveness of the legislative authority was limited to the determination of the district benefited by the improvement. It was recognized that "the question of distributing or apportioning the burden of the cost among the particular property owners is another matter." Complaints directed against the apportionment require separate notice.

*Withnell v. Ruecking Construction Co.*<sup>80</sup> involved the St. Louis combination of foot-frontage and area rule which in an earlier case<sup>81</sup> had

<sup>78</sup> (1919) 250 U. S. 94, 39 Sup. Ct. 428, 13 *American Political Science Review* 613.

<sup>79</sup> (1918) 248 U. S. 165, 39 Sup. Ct. 62, 13 *American Political Science Review* 613.

<sup>80</sup> (1919) 249 U. S. 63, 39 Sup. Ct. 200.

<sup>81</sup> *Gast Realty Co. v. Schneider Granite Co.*, (1916) 240 U. S. 55, 36 Sup. Ct. 254, 12 *American Political Science Review* 451. See the later case between the same parties in *Schneider Granite Co. v. Gast Realty Co.*, (1917) 245 U. S. 288, 38 Sup. Ct. 125, 13 *American Political Science Review* 70.

been held inapplicable to the particular situation before the court. The earlier case had, however, sustained the one-fourth part of the assessment levied by the foot-frontage rule, and inasmuch as the evidence showed that the assessment in the principal case reached by applying the combination rule was less than what it would have been if the total cost had been apportioned according to frontage, the Supreme Court found itself unable to say that there had been any abuse of power. The court declared that where the assessment is in accordance with a legislative rule, "no previous notice or preliminary hearing as to the nature and extent of benefits" is necessary, and that an attack on a method so prescribed "can only succeed if it has produced results . . . palpably arbitrary or grossly unreasonable."

Similar principles were repeated in *Hancock v. Muskogee*<sup>82</sup> where the cost of a sewer was assessed according to the area of the abutting lots, Mr. Justice Pitney declaring that it is settled that "whether the entire amount or a part only of the cost of a local improvement shall be imposed as a special tax upon the property benefited, and whether the tax shall be distributed upon a consideration of the particular benefit to particular lots or apportioned according to their frontage upon the streets, their values, or their area, is a matter of legislative discretion, subject, of course, to judicial relief in cases of actual abuse of power or of substantial error in executing it, neither of which is here asserted."

The objection pressed most strongly in *Mt. St. Mary's Cemetery Association v. Mullins*<sup>83</sup> was that a cemetery was not benefited by a sewer and therefore could not be included in a sewer district. The association had litigated the issue unsuccessfully in the state courts, and had been there given the hearings deemed sufficient to satisfy the procedural requirements of due process. The only benefit referred to by the Supreme Court in sustaining the assessment was the fact that the sewer served to carry away surface water. It was remarked also that there was nothing to show that "the cemetery would not have been benefited as to sanitation as a result of the construction of the sewers." Without discussion it was asserted that the case was not within the principle of an earlier decision<sup>84</sup> which excluded high land from a drainage district on the ground that it could not be benefited by the enterprise. The association contended further that the assessment

<sup>82</sup> (1919) 250 U. S. 454, 39 Sup. Ct. 528.

<sup>83</sup> (1919) 248 U. S. 501, 39 Sup. Ct. 173.

<sup>84</sup> *Myles Salt Co. v. Drainage District*, (1916) 239 U. S. 478, 36 Sup. Ct. 204, 12 *American Political Science Review* 451.

should be reduced because half of its tract had been conveyed for burial lots. The state court had held that only an easement and not the fee had been conveyed and the Supreme Court held that the qualified interest remaining in the association was sufficient to support the assessment. The objection that complainant had been denied the equal protection of the laws because not placed in a district by itself, as some other cemeteries were, was rejected on the ground that "the record fails to show similarity of situation and conditions."

The remaining decision on the subject of state taxation had to do with an Alabama statute which imposed an occupation tax on persons and corporations engaged in construction work within the state, and made the tax on those whose chief office was without the state four times as large as that on those whose chief office was within the state. In reply to the claim that this discriminated against citizens of other states, the state court had said that such citizens might have their chief office within the state and that citizens of the state might have their chief office without the state. A similar position, it will be recalled, had been taken by the Supreme Court during the 1918 term in sustaining a statute restricting licenses for insurance brokers to residents of the state.<sup>85</sup> In *Chalker v. Birmingham & N. W. Ry. Co.*,<sup>86</sup> however, the case now under consideration, Mr. Justice McReynolds said that, as the chief office of an individual is commonly in the state of which he is a citizen, the statute would practically discriminate against citizens of other states. The decision declaring the tax invalid was predicated on the privileges and immunities clause of article 4, section 2, and not on the due-process clause of the Fourteenth Amendment, so the case does not shake the rule that permits discrimination against foreign corporations not engaged in interstate commerce or in work for the national government. There are indications, however, that the rule is no longer regarded with favor, and it would not be surprising if before long the Supreme Court materially modifies it.

In view of the increasing number of state income taxes, the interpretation of the federal income tax law reached in *De Ganay v. Lederer*<sup>87</sup> is important for state as well as national taxation. In this case the Supreme Court answered in the affirmative the following question certified by the Circuit Court of Appeals:

<sup>85</sup> *La Tourette v. McMaster*, (1919) 248 U. S. 465, 39 Sup. Ct. 160, 13 *American Political Science Review* 627.

<sup>86</sup> (1919) 249 U. S. 522, 39 Sup. Ct. 366. See 28 *Yale Law Journal* 824.

<sup>87</sup> (1919) 250 U. S. 376, 39 Sup. Ct. 524.

"If an alien non-resident owns stock, bonds, and mortgages secured upon property in the United States or payable by persons or corporations there domiciled, and if the income therefrom is collected for and remitted to such non-resident by an agent domiciled in the United States, and if the agent has physical possession of the certificates of stock, the bonds and the mortgages, is such income subject to an income tax under the Act of October 3, 1913?"

After reviewing the facts of the case, including the power possessed by the agent to sell, assign, or transfer the securities and reinvest the proceeds of sales, Mr. Justice Day declared: "It is difficult to conceive how property could be more completely localized in the United States. There can be no question of the power of Congress to tax the income from such securities." The case on its facts does not go beyond those in which intangibles have been regarded as having what is called a "business situs" in the place where an agent does an investment business for his principal, and therefore warrants no inference that the Supreme Court means to allow a state to tax income paid to non-residents except where it can tax to him the sources of that income. The opinion, too, is careful to mention "the authority given to the local agent" as an important element in the case, but it may be worth noting that there is no declaration that such element is indispensable.

The so-called Harrison Narcotic Drug Act, passed by Congress on December 17, 1914, came before the court in *United States v. Doremus*<sup>88</sup> and was sustained by a vote of five to four. The act required all dispensers of drugs to register with the collector of internal revenue and to pay a tax of one dollar a year. Doremus had registered and paid the tax but he had violated the further provision forbidding the sale of drugs except in pursuance of a written order on a form issued by the commissioner of internal revenue. Under the statute the person filling the order was required to file it for the inspection of treasury agents. There were exceptions in favor of physicians, but Doremus, though a physician, did not bring himself within the exception. He contended that the provisions which he violated had no fiscal purpose but were purely police measures and as such were beyond the powers delegated to Congress and an encroachment on the reserved powers of the states. The district court and Chief Justice White together with Justices McKenna, Van Devanter and McReynolds agreed with him; but

<sup>88</sup> (1919) 240 U. S. 86, 39 Sup. Ct. 214. See 4 *Cornell Law Quarterly* 196, 32 *Harvard Law Review* 846, and 28 *Yale Law Journal* 599. For a note on the decision in the court below see 18 *Columbia Law Review* 459.

the majority, speaking through Mr. Justice Day, found themselves unable to say that the provisions in question had no relation to the raising of revenue. They thought that they tended to keep the traffic above board and subject to inspection, and "to diminish the opportunity of unauthorized persons to obtain drugs and sell them clandestinely without paying the tax imposed by the federal law." The test applied appeared from one portion of the opinion to be whether the provisions had some or no relation to a fiscal object, and not whether the relation if any was a reasonably close one. But earlier it was said that "if the legislation enacted has some reasonable relation to the exercise of the taxing authority conferred by the Constitution, it cannot be invalidated because of the supposed motives which induced it." While the case does not involve prohibitory taxation and therefore does not furnish a sure index of what the present court will say as to the federal excise on manufacturing goods in factories in which children are employed, it may be significant that the opinion referred with approval to the case<sup>89</sup> sanctioning the supposedly prohibitive tax on the manufacture of artificially colored oleomargarine.

## VII. EMINENT DOMAIN

One who contended that the clause of the Fifth Amendment reading "nor shall private property be taken for public use, without just compensation" entitled him to compensation from a state for damages from flooding due to the elevation of the spillway of a state-maintained dam learned from *Palmer v. Ohio*<sup>90</sup> that the Fifth Amendment is not a shield against state action.

*Portsmouth Harbor Land & Hotel Co. v. United States*<sup>91</sup> held that no "taking" within the Fifth Amendment was committed by firing projectiles across complainant's land.

In *United Railroads v. San Francisco*,<sup>92</sup> the court was unable to say from the evidence before it that the damage caused a street railroad by having a new municipal road cross its tracks was sufficient to be regarded as a taking of its property rather than an incidental injury to which its franchise was subject, since the new road had not been constructed. The bill to enjoin the new construction was dismissed

<sup>89</sup> *McCray v. United States*, (1904) 195 U. S. 27, 24 Sup. Ct. 769.

<sup>90</sup> (1918) 248 U. S. 32, 39 Sup. Ct. 16.

<sup>91</sup> (1919) 250 U. S. 1, 39 Sup. Ct. 399.

<sup>92</sup> (1919) 249 U. S. 517, 39 Sup. Ct. 361.



without prejudice, however, so that the company might be entitled to show later that the damage was sufficiently great as to constitute a taking which must be paid for under the due-process clause of the Fourteenth Amendment. This disposition of the case indicates that Mr. Palmer, who unsuccessfully adduced the Fifth Amendment against Ohio, might have had better success with the Fourteenth Amendment.

*Louisville & N. R. Co. v. Western Union Telegraph Co.*<sup>83</sup> held that the description of the right of way to be taken by a telegraph company along a railroad was sufficiently definite, although the location of the poles was not specified, where only one line of poles was to be allowed, and they were required to be set up so as not to interfere with the operations of the railroad, and to be subject to the stipulations set forth in the petition, one of which contained an agreement on the part of the telegraph company to change the line at its expense to correspond to any change in the location of the railroad tracks. "The description," remarked Mr. Justice Holmes, "has been held to satisfy the requirements of State law and it would be extravagant to say that the Fourteenth Amendment made it bad." The same case held that no constitutional rights were infringed because the hearing on the question whether there was a right to condemn was given in a separate equity proceeding rather than in the suit in which damages were assessed or because the hearing on other matters was postponed until it should clearly appear that the telegraph company was making the wrongful use of the line which it was charged to contemplate making.<sup>84</sup>

### VIII. RETROACTIVE CIVIL LEGISLATION

The familiar principle that the police power for the protection of health, morals and safety cannot be bargained away was applied to dismiss objections raised under the obligation-of-contracts clause in three cases already considered which sustained ordinances prohibiting the storage of oil,<sup>85</sup> requiring the removal of railroad tracks on the

<sup>83</sup> (1919) 250 U. S. 363, 39 Sup. Ct. 513.

<sup>84</sup> In *Orr v. Allen*, (1918) 248 U. S. 35, 39 Sup. Ct. 23, the court gave no consideration to a complaint against a statute creating drainage districts with power of eminent domain, since it was clear that the objections urged were founded on an assumed construction of the statute which the state court had expressly decided it would not bear.

<sup>85</sup> *Pierce Oil Corporation v. New Hope*, (1919) 248 U. S. 498, 39 Sup. Ct. 172, 13 *American Political Science Review* 624

public street<sup>96</sup> and regulating the size and location of billboards.<sup>97</sup> The contracts relied on in the billboard case were those between the company and advertisers. In the oil case the alleged contract was a previous removal to the present location at the request of the city. Such a request, said Mr. Justice Holmes, "does not import a contract not to legislate if the public welfare should require it, and such a contract if made would have no effect." In the railroad case it was assumed that the tracks were located under a franchise and that the right granted became a vested property right, but it was insisted that the right was held subject to the power of the city to enforce reasonable regulations for the public safety, and the regulation in question was found to be reasonable. It was implied that the degree of reasonableness required to sustain a police measure might be greater when vested rights were affected than when they were not.

In several cases the contracts claimed and relied on were held not to possess the quality imputed to them by the objectors to changes in the *status quo ante*. Northern Pacific Ry. Co. v. Puget Sound & W. H. Ry. Co.<sup>98</sup> found nothing but a rule of present policy in a statute allowing companies later formed to cross the tracks of existing companies but requiring the newcomer to pay the cost of crossing. A later statute dividing the expenses between the crossed and the crossing road was therefore held applicable to a company whose tracks were laid after the former statute was passed and before the change in policy.

In United Railroads v. San Francisco<sup>99</sup> a statute, in force at the time of the grant of complainant's franchise, prohibiting two street railroads from occupying or using the same street or track for more than five blocks, was thought to be merely a declaration of present legislative policy and a limitation for the time being on municipal officers, but not a contract by the state, nor an authority to the municipalities to contract, against a larger use of the street. This, however, was not the ground of the decision in the case, since the complaint was against a use of the streets by a municipal railroad, and to this it was answered that the court had previously decided that a "covenant by a city not to grant to any other person or corporation a privilege

<sup>96</sup> Denver & R. G. R. Co. v. Denver, (1919) 250 U. S. 241, 39 Sup. Ct. 450, 13 *American Political Science Review* 618, 630.

<sup>97</sup> St. Louis Poster Advertising Co. v. St. Louis, (1919) 249 U. S. 269, 39 Sup. Ct. 274, 13 *American Political Science Review* 624.

<sup>98</sup> (1919) 250 U. S. 332, 39 Sup. Ct. 474.

<sup>99</sup> (1919) 249 U. S. 517, 39 Sup. Ct. 361, *supra*, footnote 92.

similar to that granted to the covenantee does not restrict the city from itself exercising similar power."

*Darling v. Newport News*<sup>100</sup> held that a lease by a state of land under water to be used for oyster beds does not import any contract not to permit a municipality to discharge sewage into the water over the beds. It was doubted whether the state would have power to make such a contract and thus tie its hands in a matter so important for the public welfare. In *Pawhushka v. Pawhushka Oil & Gas Co.*,<sup>101</sup> it was a city that complained because a limitation lawfully imposed by it on the rates charged by a gas company was removed by an order of the state corporation commission permitting the raising of the rates. The commission acted under authority granted by the legislature. The state court decided against the city, and a writ of error to the United States Supreme Court was dismissed on the oft-declared principle that a city has no rights under the obligation-of-contracts clause in any governmental powers with which the state may from time to time endow it.

In two other cases rates fixed by commissions were unsuccessfully resisted in reliance on the obligation-of-contracts clause. *Englewood v. Denver & S. P. Ry. Co.*<sup>102</sup> held that a town ordinance granting a franchise and permitting certain fares was not a contract immune from the power of the state commission to regulate the charges. The facts are so concealed in the opinion that it is difficult to tell just what the case stands for. In *Union Dry Goods Co. v. Georgia Public Service Corporation*,<sup>103</sup> the plaintiff had to be told that it could not, by making a contract with an electric light company for certain rates for a term of five years, defeat the power of the state to authorize the service corporation to charge more. It chanced that the commission was vested with power before the making of the contract relied on, but this does not appear to have been regarded as important. Mr. Justice Clarke remarked rather tartly that the decisions which he cites "should suffice to satisfy the most skeptical or belated investigator that the right of private contract must yield to the exigencies of the public welfare when determined in an appropriate manner by the authority of the state."

In two cases writs of error were dismissed for want of jurisdiction because it did not appear that the state decisions complained of gave

<sup>100</sup> (1919) 249 U. S. 540, 39 Sup. Ct. 371.

<sup>101</sup> (1919) 250 U. S. 394, 39 Sup. Ct. 526.

<sup>102</sup> (1919) 248 U. S. 294, 39 Sup. Ct. 100. See 17 *Michigan Law Review* 429.

<sup>103</sup> (1919) 248 U. S. 372, 39 Sup. Ct. 117.

any effect to a law of the state subsequent to the alleged contract. *United States Fidelity & Guaranty Co. v. Oklahoma*<sup>104</sup> involved a state decision which held that a surety company which had guaranteed a bank deposit was not entitled to exoneration from the bank and to contribution from the state depositors' guaranty fund. The Supreme Court found that the state court had predicated the result on a line of state decisions which tended to support it and not on a state statute passed after the execution of the bond. The opinion of Mr. Justice McReynolds contents itself with referring to the leading state decision without presenting its doctrine or its reasoning, so that we are left without the necessary data to enable us to judge the merits of the contention denied. The state decision left undisturbed by *Farson, Son & Co. v. Bird*<sup>105</sup> had denied a mandamus against a county treasurer on the ground that the only remedy of the bondholder was against the county board of revenue. This was held to be a decision on a mere question of procedure and not to deny contract rights of the creditors, especially in view of the fact that a later decision of the state court had authorized mandamus proceedings against the board of revenue.

Another impecunious county was involved in *Missouri & Arkansas Lumber & Mining Co. v. Greenwood District*<sup>106</sup> which allowed a state statute providing that judgments on county indebtedness should not bear interest to be applied to judgments rendered before its enactment. It was not contended that a judgment was a contract, but it was urged that judgments which by their terms bore interest at a designated rate could not be changed by subsequent legislation consistently with due process of law. An earlier decision was sought to be distinguished on the ground that the judgment there involved did not specify the rate of interest, but the court answered that "the mere recital of a particular rate does not change the nature of the charge as a penalty or liquidated damages." The earlier decision had held that the allowance of interest on judgments was not a matter of contract but one of legislative discretion which could be altered from time to time as to any interest not then accrued. In the principal case it was noted that the warrants for which the judgment was rendered were non-interest bearing, and it was recognized that, if this had not been the case, "a different question would have been presented."

<sup>104</sup> (1919) 250 U. S. 111, 39 Sup. Ct. 399.

<sup>105</sup> (1919) 248 U. S. 263, 39 Sup. Ct. 111.

<sup>106</sup> (1919) 249 U. S. 170, 39 Sup. Ct. 202.

The only successful reliance on the obligation-of-contracts clause was in *Central of Georgia Ry. Co. v. Wright*<sup>107</sup> which found that an attempt to tax the lessees of a railroad on their leasehold interests violated the original contract in the charter of the lessor railroad prescribing the exclusive mode of taxation. It had previously been held that the property itself could not be taxed to the lessees, and the present tax was said to be an attempt to accomplish by a change of form what had already been held forbidden. In this case it was the constitution of the state which constituted the law impairing the obligation of the contract.

The cases remaining for consideration involve objections to congressional legislation which are predicated upon the due-process clause of the Fifth Amendment. *Fink v. County Commissioners*<sup>108</sup> allowed Indian lands which when allotted were declared nontaxable and inalienable for a term of years to be made alienable and taxable in the hands of an alienee. For all that appears the original exemption was regarded as contractual, though the question is not considered. The case is disposed of on the ground that "it invades no right of the Indian . . . to make the alienation of the land a surrender of the exemption from taxation." While the opinion specifically left undecided the question "whether a grantee of an Indian could avail himself of the Indian's right, if he had any, to assert the unconstitutionality of an act of Congress," it expressed approval of the decision of the state court that the alienee who acquired the opportunity to purchase the land only through the removal of the prior restriction on alienation, cannot repudiate the conditions on which the restriction is removed. On the economics of the legislation so far as it affects the interests of the Indian, Mr. Justice McKenna observed: "It is an error to suppose that this takes anything of value from the Indian. We may here invoke the commonplace, for it is a commonplace to say that we only know the value of a thing by that which makes its worth. Under the restriction against the alienation the land had no worth but in its uses; the restriction removed, it had the added worth of exchangeability for other things—a power of sale was conferred. To say there was no value in that power is to contradict the examples and estimations of the world."

<sup>107</sup> (1919) 248 U. S. 525, 39 Sup. Ct. 181.

<sup>108</sup> (1919) 248 U. S. 399, 39 Sup. Ct. 128.

In *Capital Trust Co. v. Calhoun*<sup>109</sup> an attorney who had a contract with his client for a lien upon the amount which he should collect for him from the government objected because the congressional legislation making an appropriation for the payment of the claim restricted the amount which the attorney should receive from the proceeds to less than the percentage agreed by the client. The case arose in proceedings against the deceased client's administrator and it chanced that the only funds in his possession were those received from the government. The power of the government to restrict payment from those funds was sustained on the theory that legislation was necessary to the recovery of anything from the government and that the favor bestowed must be taken by all interested subject to the limitations contained in the grant. The court pointed out that it did not pass on the question whether the contract could be enforced against assets not received from the government.

#### IX. IMMUNITIES OF PERSONS CHARGED WITH CRIME

In three cases, convictions under the Espionage Act of 1917 were sustained notwithstanding the objection that, since the offense charged consisted solely of written or spoken utterances, the result was a violation of the First Amendment prohibiting Congress from making any law "abridging the freedom of speech or of the press." The defendants had been found guilty of attempts or conspiracies to obstruct recruiting. In no case was it proven that the obstruction has occurred. Mr. Justice Holmes implied that the First Amendment imposes restriction on punishment for the use of language as well as on the use of the censorship. In *Schenck v. United States*<sup>110</sup> he says: "We admit that in many places and in ordinary times the defendants in saying all that was said in the circular would have been within their constitutional rights. But the character of every act depends upon the circumstances in which it is done. . . . The question in every case is whether the words used are used in such circumstances and are of such a nature as to create a clear and present danger that they will

<sup>109</sup> (1919) 250 U. S. 208, 39 Sup. Ct. 486, 13 *American Political Science Review* 621.

<sup>110</sup> (1919) 249 U. S. 47, 39 Sup. Ct. 247. See Zechariah Chafee, Jr., "Freedom of Speech in War Time," 32 *Harvard Law Review* 932, and Thomas F. Carroll, "Freedom of Speech and of the Press in War Time," 17 *Michigan Law Review* 621, for discussions of all the Espionage Cases. Mr. Chafee's article contains an exhaustive bibliography on the subject of Freedom of speech.

bring about the substantive evils that Congress has a right to prevent. It is a question of proximity and degree. When a nation is at war, many things that might be said in time of peace are such a hindrance to its effort that their utterance will not be endured so long as men fight and that no Court could regard them as protected by any constitutional right."

It is thus apparent that the practical effect of the free speech amendment depends upon the scrutiny which an appellate court casts at the relation between the evidence offered and the verdict of the jury. In *Frohwerk v. United States*<sup>111</sup> it was remarked that "we do not lose our right to condemn either measures or men because the country is at war" and it was said of the case before the court: "It does not appear that there was any special effort to reach men who were subject to the draft; and if the evidence should show that the defendant was a poor man, turning out copy for Gleeser, his employer, at less than a day laborer's pay, for Gleeser to use or reject as he saw fit, in a newspaper of small circulation, there would be a natural inclination to test every question of law to be found in the record very thoroughly before upholding the very severe penalty imposed." This certainly hints that the Supreme Court may hold as a matter of law that the likelihood of any harm ensuing from the objectionable publication is so slim that a conviction is unwarranted. But Mr. Justice Holmes goes on to say: "But we must take the case on the record as it is, and on that record it is impossible to say that it might not have been found that the circulation of the paper was in quarters where a little breath would be enough to kindle a flame and that the fact was known and relied upon by those who sent the paper out." This implies that the verdict of the jury will be set aside only where the court finds it impossible for a reasonable man to infer that harm might ensue from what was said, and considerably weakens the declaration in the *Schenck* case that the question is whether the words are so used as to create a clear and present danger of substantive evils.

The opinion in *Debs v. United States*<sup>112</sup> adds little to the previous discussion except to point out that expressions which, under all the circumstances, would probably obstruct recruiting, are not protected because "part of a general program and expressions of a general and conscientious belief." The three cases can be fully understood only in the light of all the utterances involved. Space forbids their enumera-

<sup>111</sup> (1919) 249 U. S. 204, 39 Sup. Ct. 249.

<sup>112</sup> (1919) 249 U. S. 211, 39 Sup. Ct. 252.

tion here, but there can be no doubt that all had pretty clearly implied nobility in any one who refused to acquiesce in the draft or contribute to the prosecution of the war. Further constitutional questions may be raised by convictions under the Espionage Act of 1918 which is broad enough in its terms to punish almost any cantankerous or grumbling remarks about the conduct of the war.

Among minor points involved in the Espionage Law Cases are that documentary evidence is not inadmissible because obtained on a search warrant which is valid so far as appears, that a single count in an indictment for conspiring to commit two offenses is not bad for duplicity when the conspiracy is the crime and is single, however diverse its objects, and that the fact that the offense charged might constitute treason does not prevent its punishment as something else or the fact that it is not treason render it immune from punishment.

That judges are limited by the Fifth Amendment in committing for contempt was laid down in *Ex parte Hudgings*<sup>113</sup> in which a commitment for supposed perjury was set aside as void for excess of power, since it did not appear that the supposed perjury had any obstructive effect on the course of justice or that the commitment was based on any other considerations than the mere fact of perjury. On the constitutional question Chief Justice White declared: "Existing within the limits of and sanctioned by the Constitution, the power to punish for contempt committed in the presence of the court is not controlled by the limitations of the Constitution as to modes of accusation and methods of trial generally safeguarding the rights of the citizen. This, however, expresses no purpose to exempt judicial authority from constitutional limitations, since its great and only purpose is to secure judicial authority from obstruction in the performance of its duties to the end that means appropriate for the preservation and enforcement of the Constitution may be secured."

It is not wholly clear that the decision in *Blair v. United States*<sup>114</sup> rested on constitutional grounds. Some Michigan persons were subpoenaed to testify before a federal grand jury in New York which was investigating an alleged violation of the Corrupt Practices Act in connection with verifying and filing in New York some reports with regard to a primary election in Michigan for nomination as United States senator. The witnesses came to New York but refused to answer questions on the grounds that the grand jury was without

<sup>113</sup> (1919) 249 U. S. 378, 39 Sup. Ct. 337. Mr. Justice Pitney dissents.

<sup>114</sup> (1919) 250 U. S. 273, 39 Sup. Ct. 468.



jurisdiction and that the Corrupt Practices Act was unconstitutional. They were committed for contempt, writs of habeas corpus were obtained and discharged and the complaints came to the Supreme Court. It was there held that the constitutionality of the Corrupt Practices Act was no concern of the defendants and would not be considered. It was further held that witnesses summoned before a grand jury cannot question the jurisdiction of the court or jury over the subject matter under investigation, nor urge objections of incompetency or irrelevancy to the questions asked. The duty to testify was declared to be a public duty "which every person within the jurisdiction of the government is bound to perform upon being properly summoned, and for the performance of which he is entitled to no further compensation than that which the statutes provide."

## X. JURISDICTION AND PROCEDURE OF COURTS

### THE EXTENT OF FEDERAL JUDICIAL POWER

Disputes involving the question whether a case arises under the Constitution of the United States have so far as seemed feasible been chronicled under the topics to which the substantive issue belonged. One vagabond remains for consideration. *Petrie v. Nampa & Meridian Irrigation District*<sup>115</sup> dismissed a writ of error from a state court because the Supreme Court found that the state court, even though it had passed adversely on a federal question, had also decided the case on an independent ground broad enough to sustain the judgment. This independent ground was that the cross-complaint under which the federal right was asserted was filed prematurely.

Two cases held that the suit did not arise under a law of the United States. *Odell v. F. C. Farnsworth Co.*<sup>116</sup> was found to be merely a suit for royalties under a contract and not one involving any construction of the patent laws. *Matters v. Ryan*<sup>117</sup> was a habeas corpus proceeding to secure custody of a child. The controlling question in the case was the maternity of the child. The allegation in the complaint that the pretended mother brought the child from Canada without complying with the immigration laws was found not to arise under those laws since the petitioner had no power to champion their enforcement.

<sup>115</sup> (1918) 248 U. S. 154, 39 Sup. Ct. 25.

<sup>116</sup> (1919) 250 U. S. 501, 39 Sup. Ct. 516.

<sup>117</sup> (1919) 249 U. S. 375, 39 Sup. Ct. 315.

Two cases were found not to arise under a treaty. The contention in *Cordova v. Grant*<sup>118</sup> was that the treaty between Mexico and the United States prohibited the courts from dealing with the title to disputed land until the boundary was established. The United States and Texas had for many years exercised jurisdiction over the tract in dispute. In sustaining the exercise of jurisdiction below, Mr. Justice Holmes declared that it "simply means that the Court finds the Government in fact asserting its authority over the territory and will follow its lead," adding: "It does not matter to such a decision that the Government recognizes that a foreign power is disputing its right and that it is making efforts to settle the dispute. . . . Jurisdiction is power and matter of fact. The United States has that power and the Courts may exercise their portion of it unless prohibited in some constitutional way." In holding that the treaty was not involved in the dispute, the court is following the established doctrine that whatever the treaty may mean the court must follow the interpretation of the political authorities. The issue arose before the Supreme Court because of the contention that the presence of a question under the treaty made the decision of the district court subject to direct review in the Supreme Court. Jurisdiction below was obtained by reason of diversity of citizenship.

In *Compania General De Tabacos v. Alhambra Cigar & Cigarette Mfg. Co.*<sup>119</sup> the right to appeal to the Supreme Court from the supreme court of the Philippine Islands depended upon whether the case involved the treaty with Spain continuing in force rights of property secured by patent and copyright prior to the cession of the islands. The court below had held that the trade name involved was a geographical or descriptive name incapable of registration under Philippine statutes or the law as it existed under the Spanish régime. In holding that no right secured by the treaty was involved, Mr. Justice Day declared: "Certainly the treaty, in providing that property rights of this class should be respected, did not intend to prevent the consideration by the courts of the nature and extent of the rights granted, or prohibit the application of laws for the enforcement and regulation of such property rights when not in derogation of the treaty." The grounds of the decision below were said to be "entirely compatible with continued respect for the trade-mark and trade-name rights granted by the Spanish sovereignty."

<sup>118</sup> (1919) 248 U. S. 413, 39 Sup. Ct. 138.

<sup>119</sup> (1919) 249 U. S. 72, 39 Sup. Ct. 224.

Questions as to the extent and exercise of admiralty jurisdiction arose in three cases. In *The Scow* 6 S.,<sup>120</sup> which was a libel *in rem* for penalties against a scow for illegal dumping in New York Harbor, the determining question was one of statutory construction, but in the course of the opinion Mr. Justice Pitney observed that "there is no difficulty, on constitutional or other grounds, about assessing an unliquidated fine in the admiralty." *Union Fish Co. v. Erickson*<sup>121</sup> held that a contract for service on a vessel is maritime in nature and that its enforcement in admiralty is not controlled by the state statute of frauds. *North Pacific S. S. Co. v. Hall Brothers Marine Ry. & Shipbuilding Co.*<sup>122</sup> declared that the contract for repairs of a wrecked vessel was maritime in nature, even though the repairs were to be done largely on land under the direction of the shipowner and at designated rates of compensation for the various services rendered and the materials furnished. Contentions that the repairs were in substance new construction and that the contract was in effect a lease of the shipbuilders yards and facilities were held to be unfounded.

#### REQUISITES OF JURISDICTION OVER DEFENDANTS

The attempt of Kentucky to gain jurisdiction over nonresident individuals doing business within the state through an agent by service of process on the agent was frustrated by the Supreme Court in *Flexner v. Farson*<sup>123</sup> which held that Illinois was not required to recognize a Kentucky judgment founded solely upon service on such agent who at the time of service had ceased to be agent. In deciding the case Mr. Justice Holmes said: "It is argued that the pleas tacitly admit that Washington Flexner was agent of the firms at the time of the transaction sued upon in Kentucky, and the Kentucky statute is construed as purporting to make him agent to receive service in suits arising out of the business done in that State. On this construction it is said that the defendants by doing business in the State consented to be bound by the service prescribed. The analogy of suits against

<sup>120</sup> (1919) 250 U. S. 269, 39 Sup. Ct. 452.

<sup>121</sup> (1919) 248 U. S. 308, 39 Sup. Ct. 112. See 17 *Michigan Law Review* 591, and 28 *Yale Law Journal* 500.

<sup>122</sup> (1919) 249 U. S. 119, 39 Sup. Ct. 221. See 32 *Harvard Law Review* 853, and 28 *Yale Law Journal* 697.

<sup>123</sup> (1919) 248 U. S. 289, 39 Sup. Ct. 97. See Austin W. Scott, "Jurisdiction Over Non-residents Doing Business Within a State," 32 *Harvard Law Review* 871. See also 3 *Minnesota Law Review* 277, and 28 *Yale Law Journal* 512.

insurance companies based upon such service is invoked. . . . But the consent that is said to be implied in such cases is a mere fiction, founded upon the accepted doctrine that the States could exclude foreign corporations altogether, and therefore could establish this obligation as a condition to letting them in. . . . The State had no power to exclude the defendants and on that ground without going farther the Supreme Court of Illinois rightly held that the analogy failed, and that the Kentucky judgment was void. If the Kentucky statute purports to have the effect attributed to it, it cannot have that effect in the present case." This seems sufficiently enigmatic to enable the Supreme Court to declare later that it means that a personal judgment can never be rendered against a nonresident individual without personal service within the state, or that it means only that service on an ex-agent is insufficient.

#### PROCEDURAL REQUIREMENTS

Mr. Berkman, the anarchist, deposited with the clerk of the district court a sum of money in lieu of bail. After his conviction he desired the cash returned, but the clerk retained one per cent by virtue of a statute fixing such a fee "for receiving, keeping, and paying out money, in pursuance of any statute or order of court." Mr. Berkman thought that this deprived him of property without due process, took his property for public use without just compensation, and deprived him of the privileges and immunities of a citizen of the United States. The Supreme Court thought otherwise and so held in *Berkman v. United States*.<sup>124</sup> Mr. Justice McReynolds for the majority declared that the suggested constitutional questions were wholly wanting in merit and too unsubstantial even to raise an issue to give the Supreme Court jurisdiction on the writ of error. Justices Holmes and Brandeis dissented but without giving their reasons. We do not know, therefore, whether they merely thought the contentions of sufficient merit to be considered or whether they went further and thought them worthy of acceptance. If the latter, it does not seem courteous of the majority to declare that the matter is "too clear for serious discussion."

<sup>124</sup> (1919) 250 U. S. 114, 39 Sup. Ct. 411.

## FAITH AND CREDIT TO PROCEEDINGS OF SISTER STATES

The full faith and credit clause was unsuccessfully adduced by two insurance companies which relied on the recent tendency of the Supreme Court to prevent diverse holdings in different states as to the powers of a corporation<sup>125</sup> and to nullify attempts on the part of a state to use its power over acts within its borders to control acts without.<sup>126</sup> The statute objected to in *American Fire Insurance Co. v. King Lumber & Mfg. Co.*<sup>127</sup> made the person who solicits insurance and procures applications the agent of the insurer notwithstanding anything in the policy to the contrary. But the court found that the statute did not attempt to invade another state and exercise control there but "stays strictly at home in this record and regulates the insurance company when it comes to the state to do business with the citizens of the state and their property."

*Hartford Life Insurance Co. v. Johnson*<sup>128</sup> went off on the ground that the constitutional question had not been seasonably raised in the state court. The determining question in a suit in Missouri against a Connecticut insurance company was whether an assessment on the policy holder was validly levied. The Missouri court held that it was not, and refused to give any effect to a Connecticut judgment of contrary tenor rendered between the trial and the hearing on appeal of the Missouri suit. It was conceded that the Connecticut judgment if seasonably pleaded in the Missouri court must defeat the Missouri action, but the Supreme Court held that the Missouri decision followed the established practice in the courts of that state and was not rendered in a spirit of evasion for the purpose of defeating the claim of federal right. It followed, therefore, that the federal question was rightly refused consideration below and so was not before the Supreme Court.

The company also objected that the Missouri court failed to give full faith and credit to the Connecticut charter. On this point Mr. Justice Clarke declared: "Even if this charter, which was granted by a resolution of the Assembly of Connecticut, be regarded as a public act or record of that state within the scope of the constitutional provision (article 4, section 1), which is not decided, nevertheless since

<sup>125</sup> See cases reviewed in 12 *American Political Science Review* 662-64, and 13 *American Political Science Review* 246-47.

<sup>126</sup> See 13 *American Political Science Review* 247.

<sup>127</sup> (1919) 250 U. S. 2, 39 Sup. Ct. 431, 13 *American Political Science Review* 627.

<sup>128</sup> (1919) 249 U. S. 490, 39 Sup. Ct. 336.

no statute of Connecticut or decision of any court of that state was pleaded or introduced in evidence in this case, giving a construction to the provisions of the charter which the Missouri courts, treating as valid, interpreted, the exercise by those courts of an independent judgment in placing a construction upon it cannot present a federal question under the full faith and credit clause of the Constitution." Thus the hint thrown out in earlier cases that sister states must follow the home state of a corporation in interpreting its charter, even when the matter has not been specifically adjudicated in the home state in a proceeding to which the litigants in the sister state are parties or privies, still remains to be confirmed by explicit decision.

## XI. ADMINISTRATIVE POWER AND PROCEDURE

The power vested in the secretary of war to fix the limits within which houses of ill fame within the neighborhood of army posts should be suppressed was upheld in *McKinley v. United States*,<sup>129</sup> as one of the "mere details" of the legislation.

The question whether an administrative order complained of was a "law of the state" so as to bring a dispute concerning it within the jurisdiction of the federal courts arose in two cases. *Lake Erie & W. R. Co. v. Public Utilities Commission*<sup>130</sup> held that an order to a railroad to restore a side track was legislative in character and so to be regarded as a state law. But *Standard Computing Scale Co. v. Farrell*<sup>131</sup> found that instructions issued by the state superintendent of weights and measures with respect to the proper equipment of scales were not a law, but mere suggestions, since the local officials to whom the so-called instructions were issued were not subordinates of the state superintendent nor subject to his control.

Three cases involved the question whether the determinations of administrative officials were final and conclusive. *United States v. Laughlin*<sup>132</sup> depended upon the construction of a statute providing that "in all cases where it shall appear to the satisfaction of the Secretary of the Interior" that a person has made payments under the public land laws in excess of the lawful amount, a refund shall be made. The secretary contended that it rested in his uncontrolled discretion

<sup>129</sup> (1919) 249 U. S. 397, 39 Sup. Ct. 324, 13 *American Political Science Review* 620.

<sup>130</sup> (1919) 249 U. S. 422, 39 Sup. Ct. 345, 13 *American Political Science Review* 630.

<sup>131</sup> (1919) 249 U. S. 571, 39 Sup. Ct. 380.

<sup>132</sup> (1919) 249 U. S. 440, 39 Sup. Ct. 340.

to direct repayment, but the court held that it was the intent of Congress that he should have exclusive jurisdiction only to determine disputed questions of fact. Since his decision in the case before the court had been rested wholly on a question of law, the Supreme Court held it reviewable. Mr. Justice Pitney remarked that under the construction urged by the secretary the legislative power would in effect be delegated to him, but did not say whether this would be unconstitutional.<sup>133</sup>

*Houston v. St. Louis Independent Packing Co.*<sup>134</sup> and *Brougham v. Blanton Mfg. Co.*<sup>135</sup> sustained determinations of the secretary of agriculture that certain trade names were false and deceptive under the Meat Inspection Act, under the principle that "the conclusion of the head of an executive department on such a question will not be reviewed by the courts, where it is fairly arrived at and with substantial evidence to support it." Both cases reversed decrees of the circuit court of appeals granting relief to the complainants. The opinions of the Supreme Court considered the evidence sufficiently to reach the conclusion that the determination of the secretary was not arbitrary.

<sup>133</sup> In *Lane v. Darlington*, (1919) 249 U. S. 331, 39 Sup. Ct. 299, the Supreme Court set aside an injunction awarded by the court below in favor of an owner of land bordering on government land forbidding a resurvey of government land on the direction of the secretary of the interior. The opinion of the Supreme Court said that, as the whole proceeding was merely an effort by the United States to determine the boundary of its own land, "we know of no warrant for the notion that the power is exhausted by a single exercise of it." It was recognized that "the case is different when the act of the secretary is directed to a third person, as, for instance, the approval of a map of the location of a railroad over public lands, where the approval operates as a grant."

<sup>134</sup> (1919) 249 U. S. 479, 39 Sup. Ct. 332.

<sup>135</sup> (1919) 249 U. S. 495, 39 Sup. Ct. 363.

## AMERICAN GOVERNMENT AND POLITICS

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**The Special Session of Congress.**<sup>1</sup> Problems left unsolved rather than measures which were passed are the noteworthy features of the special session of the Sixty-sixth Congress—from May 19 to November 19, 1919. The senate was almost exclusively occupied with the Peace Treaty, the session ending in a deadlock over the reservations to the League of Nations covenant; and the treaty, together with the Anglo-French-American alliance and the other agreements of the Paris Conference, went over to the regular session. The appropriation bills, a resolution submitting the woman suffrage amendment to the states, the repeal of daylight saving,<sup>2</sup> and the prohibition enforcement law, constitute the most important legislation which was completed. The two latter measures were passed over the President's veto and evidenced a disposition on the part of Congress to reassert the authority which during the war had been limited by presidential control. The house of representatives approved a bill—which was badly mutilated before its

<sup>1</sup> For a review of the last session of the Sixty-fifth Congress, see *American Political Science Review*, XIII, 251 (1919).

<sup>2</sup> The agricultural appropriation bill (H.R. 3157) contained a rider which repealed the daylight saving law. On this account President Wilson vetoed the whole measure. The house voted on July 14, 248 to 135, to pass the bill over the President's veto, the attempt failing for want of the necessary two-thirds. A new bill was introduced with the daylight saving rider eliminated (H.R. 7413) and passed the house on July 18 (Public Law No. 22). This provision had been included in the agricultural appropriation bill by a senate amendment, since the house of representatives on January 18 had passed a special bill repealing the daylight saving law (H.R. 3854). This measure was reported in the senate on July 29, passed the senate on August 1, and was vetoed by the President on August 15. It passed the house over the veto on August 19 by a vote of 223 to 101, and the senate on August 20 by a vote of 57 to 19.

An interesting question of procedure was raised in the house of representatives on August 18, when Representative Wingo challenged the right of the Speaker to withhold the veto message from the house, making the point of order "that the veto message from the President of the United States is on the table and that under the practice and rules of the house and the constitutional provi-



passage and now satisfies nobody—providing for the return of the railroads to their owners (H. R. 10453, House Report 456), and a bill which, if it does not create a real budget system, at least shows some disposition to improve the present haphazard and wasteful method of appropriating public money (H. R. 9783, House Report 362). While the house did not have foreign problems to engross its attention, it had great difficulty in keeping a quorum and lost much time in roll calls.

Apart from the Peace Treaty, the chief interests of the special session were not legislative. They were President Wilson's continued illness, the problem of high prices, and labor troubles.

*The Organization of Congress.* Both houses were at once confronted by problems of organization with the Republican party in control, after eight years as the minority in the house of representatives and six years in the senate. Harmony was only on the surface in the appointment of the senate committees, and the fight between the "old guard" and "progressives" was rather bitter. At a conference of Republican senators held on May 14, Senator Cummins was chosen president *pro-tempore*—a concession to the progressives—and Senator Lodge, floor leader. The conference approved the Norris resolution which provided that no senator should be chosen chairman of more than one of the ten important committees and could not be a member of more than two of these committees: appropriations, agriculture, commerce, finance, foreign relations, interstate commerce, judiciary, military affairs, naval affairs, and post offices and post roads.<sup>3</sup>

sion the house should proceed to consider it." Speaker Gillett said it was within his discretion to lay it before the house when he pleased, but a unanimous consent agreement to take the veto message up the next day relieved him of the necessity of a more direct and official ruling. It is extremely doubtful whether the Speaker has this discretion, and it would seem that a veto message must be laid before the house at once. In the present case, there was apparently some doubt as to whether the votes necessary to override the veto could have been mustered if the message had been laid before the house immediately, and it is possible that on a more important issue such discretion on the part of the Speaker might result in a decisive partisan advantage.

<sup>3</sup>The Norris resolution, which came before the senate on November 15, 1918, (amending rule XXV of the standing rules of the senate) provided that no senator who was chairman of one of the important committees (omitting commerce and agriculture from the enumeration above) should be a member of any of the other committees. This was changed to the form in which it was adopted by the Republican conference. A number of the senators who have had long service are taken off one or more of these committees. Senator Lodge, for example, was on the finance, foreign relations, and naval affairs committees; Senator Penrose was on

Senators Borah, Johnson, Kenyon and Jones all declined to serve on the committee on committees, and Senators Gronna and McNary were appointed to give representation to the progressives. The chief fight centered on Senator Penrose and Senator Warren as chairmen of the finance and appropriations committees, respectively, but both senators were appointed.

The organization of the house of representatives was apparently more harmonious. Frederick H. Gillett, of Massachusetts, was chosen Speaker; Frank W. Mondell, of Wyoming, Republican floor leader; and ex-Speaker Champ Clark, leader of the minority. The election of Mr. Mondell came after a bitter fight against James R. Mann, of Illinois, a member of the "old guard," but an able parliamentarian. No enthusiasm has been manifested in the house or elsewhere over Mr. Mondell, and the details of this review show that his leadership has not resulted in any great amount of constructive legislation.

*The President's Recommendations.* The third session of the Sixty-fifth Congress ended on March 4, 1919, with seven appropriation bills not passed on account of a filibuster by certain of the Republican senators who desired to embarrass the President and force an immediate special session, during which, as a result of the November, 1918,

finance, naval affairs, and post offices and post roads; Senator Warren was on agriculture, appropriations, and military affairs. These senators have each been dropped from one committee.

The Norris resolution was aimed at a system of interlocking memberships on senate committees, under which a few men control legislation in the senate. The work of the system is seen at its worst advantage in the conference committees—composed of the chairman, ranking majority member, and ranking minority member. During the Sixty-fifth Congress, 105 conference committees were appointed, and five senators served on 82 of these, the number for each being as follows: Smoot 33, Warren 23, Nelson 11, Lodge 9, and Penrose 6. (*The Searchlight*, June, 1919.) On March 1, 1919, Senator La Follette made a lengthy speech in the senate which resulted in the defeat of the coal and oil bill. Part of this speech was taken up with an interesting analysis of the functions of these conference committees. He showed that in spite of rules denying conferees the authority to legislate, new provisions were frequently inserted in bills, and that the summary action in many cases taken on the reports of the conference committees deprived Congress of its legislative authority and handed it over to the small groups who were appointed to reconcile the ideas of the senate and house of representatives. He suggested that a new rule requiring that, during the short session, all bills originating in either house be sent to the other house not later than January 10 would be necessary in order to do away with the practice of approving eleventh-hour conference reports in order to get something accomplished.

election, the Republicans would be in control. Throughout the country there was a considerable demand for the convening of the new Congress; it was urged that Mr. Wilson, who had returned from Paris to sign the bills passed during the closing days of the session, should not return to the Peace Conference, but that his paramount duty was to stay in the United States and, with congressional assistance, attempt to solve the very pressing domestic problems of the transition period from war to peace. At the same time it was urged that Congress should reassert the authority which it had lost during the war. There was also a general feeling, irrespective of party, that with certain executive departments handicapped by a lack of funds and with an enormous mass of business awaiting legislative settlement, Congress should be called in special session.

This was done by the President from Paris, and Congress met on May 19. The committees which under the rules are appointed to notify the President that Congress has been organized and is awaiting his message communicated with him by cable, and for the first time in the history of the government the President addressed Congress by the same method. His message dealt only with domestic problems and contained a number of definite recommendations. It will be worth while to enumerate the problems on which Mr. Wilson asked congressional action and to state summarily the legislative results, reserving several problems for more detailed discussion. The President recommended:

1. "A genuine coöperation and partnership, based upon a real community of interest and participation in control" and a "genuine democratization of industry." Legislation to help in this would be a measure coördinating the several agencies of conciliation and adjustment already in existence and the development of the unemployment organization of the department of labor. Except for the compulsory arbitration features of the Cummins railroad bill (S. 3288) and the section of the Food Control Act (H. R. 8624), which was used to justify the injunction against the miners, no action was taken.

2. The passage of a measure permitting returning soldiers to find and take up land in the hitherto undeveloped regions of the country. The Mondell soldiers' settlement bill (H. R. 487) was reported to the house on August 1, 1919, but no further action was taken. The reason for this is that, in the form reported, its passage is doubtful, since it seems to be adapted chiefly to benefit western states containing arid

and cutover land; provides only for colony projects and not individual farms; discriminates in favor of soldiers seeking farm homes, and requires capital on the part of the soldier (\$1500 to \$2000) to secure the benefits of the act.

3. Legislation friendly to the plans and purposes of American merchants and providing a constructive merchant marine policy. A bill repealing certain war legislation and providing for the development of the merchant marine (H. R. 10378) passed the house on November 8, but it relates to the disposition and regulation of government-built ships rather than to the expansion of the carrying trade.

4. A reconsideration of taxes in order to simplify them and to repeal certain minor taxes provided for in the acts of 1917 and 1918. The house passed a bill construing fruit-juice beverages as not being soft drinks (H. R. 7840), and passed a measure repealing the luxury tax (H. R. 2021). This, however, was recommitted to the committee on ways and means (July 12, 1919). A bill repealing the soft drink section passed the house on July 28 (H. R. 2837).

5. No departure from the Tariff Act of 1913, but special consideration to the industries manufacturing dyestuffs and related chemicals. A joint resolution (Public, No. 21) prolongs the war time restrictions on the importation of dyes and coal tar products, as provided in the Trading with the Enemy Act. The house passed an act creating a dye licensing commission (H. R. 8078) and amended the provisions of the Tariff Act of 1913 respecting shell and pearl buttons (H. R. 7705), but neither of these measures was passed by the senate.

6. The passage of the equal suffrage resolution. This was done by Congress almost immediately.

7. The return of the telegraph and telephone lines. A measure relinquishing wire control was approved on July 11 (S. 120, Public Law No. 9).

8. The return of the railroads. The Esch bill (H. R. 10453) was reported in the house on November 10 (House Report No. 456) and was passed on November 17. The Cummins bill (S. 3288) was reported in the senate on October 23 and a new report was filed on November 10 (Senate Report No. 304). The Peace Treaty delayed consideration of this until the regular session. A bill restoring rate-making powers to the interstate commerce commission (S. 641) was vetoed by the President on November 18 (Senate Document No. 155).

9. The repeal of the war time restrictions on the manufacture and sale of wines and beers. Congress responded by passing a stringent enforcement law and overrode the President's veto.<sup>4</sup>

*The Woman Suffrage Amendment.* Almost the first business completed by Congress after it convened was the passage of the resolution submitting the woman suffrage amendment to the state legislatures for ratification. The resolution was approved by the house of representatives on May 21 by a vote of 304 to 89, as follows: Yeas, Republicans 200, Democrats 102, Independent 1, Prohibition 1; nays, Republicans 19, Democrats 89. The senate acted on June 4 by a majority of 56 to 25, as follows: Yeas, Republicans 36, Democrats 20; Nays, Republicans 8, Democrats 7. This result, which was accomplished practically without debate, showed a marked change in congressional sentiment with respect to woman suffrage by federal constitutional amendment. Such a proposal was first voted on in the senate in 1887, when there were 16 for and 34 against; in 1914 the senate vote was 35 to 34, and in 1918, 53 (26 Democrats and 27 Republicans) to 31 (21

<sup>4</sup> War time Prohibition began with the Food Control Act of August 10, 1917 (40 Stat. at L. 276) empowering the President to restrict the foodstuffs used in the manufacture of fermented liquors and to commandeer distilled spirits in bond or in stock. The importation of distilled spirits and the use of foodstuffs in their manufacture were forbidden.

A complete war time prohibition act was approved on November 21, 1918 (40 Stat. at L. 1045). It provided that after June 30, 1919, "until the conclusion of the present war and thereafter until the termination of demobilization, the date of which shall be determined and proclaimed by the President of the United States," no liquors could be sold, and after May 1, 1919, no grains or food products could be used in the manufacture of "beer, wine or other intoxicating malt or vinous liquor for beverage purposes."

President Wilson in his message from Paris of May 20, 1919, suggested a repeal of this act so far as it applied to beers and light wines, and this recommendation was repeated in a special message of June 28. The President said that, under the opinion of the attorney-general, he had no authority to remove the ban until the demobilization of the troops was complete, and he could not say that this had been accomplished, although the emergency was past.

In spite of this recommendation, Congress proceeded to pass a stringent law enforcing war time prohibition and the constitutional amendment which was to go into effect January 16, 1920. A joint resolution adding this amendment to the Constitution was introduced in Congress in August, 1917, reintroduced at the regular session, and adopted on December 28. Three states ratified it on January 16, 1919, bringing the number up to 38, and the amendment accordingly went into effect a year later, January 16, 1920.

The prohibition enforcement bill was H. R. 6810 and had the following legislative history: House Report No. 91 (June 30); passed house July 22; Senate

Democrats and 10 Republicans), three less than the necessary two-thirds. The vote in the house of representatives in 1915 was 174 to 204, and on January 10, 1918, the house approved the amendment by a bare two-thirds, 274 to 136. In 1887 one state allowed women to vote; when the resolution passed Congress complete or partial suffrage had been granted by 28 states.

Twice in June and again in July, 1918, the President urged the submission of the resolution to the states, and in September he appeared before the senate to deliver a special address on the amendment "as a vitally necessary war measure," and "as vital to the right solution of the great problems which we must settle immediately when the war is over," but at that time the senate refused to accede to his wishes. The votes and debates when the resolution was approved by the house and senate in May and June, 1919, showed that Congress recognized the resolution to be inevitable and that each party wished to receive the credit of helping the women to be given suffrage under the federal constitution. By December 7, 1919, 21 states had ratified the amendment and action was anticipated in the near future by several others. The states which had ratified were as follows: Wisconsin, Michigan,

Report 151 (August 18); passed senate September 5; Conference Report agreed to in senate October 8 (senate Document 118) and in house October 10 (House Report 360); vetoed by President October 27 on the ground that constitutional prohibition and war time enforcement should not be coupled in the same measure; passed the house over the President's veto October 27 (176 to 55), and the senate October 28 (65 to 20).

On December 15, 1919, by a unanimous decision, the Supreme Court of the United States held the measure constitutional as applied to distilled liquors (*Hamilton v. Kentucky Distilleries & Warehouse Co.*, No. 589, October Term, 1919). On January 5, by a vote of 5 to 4, the Supreme Court sustained the power of Congress to define "intoxicating" as a content of alcohol in excess of  $\frac{1}{2}$  of 1 per cent (*Ruppert v. Caffey*, No. 603, October Term, 1919). The Court by a unanimous decision held that the manufacture of 2.75 per cent beer prior to the enactment of the Volstead measure—that is, under the act of November 21, 1918, which did not define "intoxicating"—was legal (*U. S. v. Standard Brewing Co.*, No. 458, October Term, 1919).

These decisions indicate that had the President issued his proclamation as empowered by the act of November 21, 1918, liquors could have been sold up to January 16, 1920, and that there is no doubt as to the power of Congress to define "intoxicating" as a content of more than  $\frac{1}{2}$  of 1 per cent of alcohol, for the enforcement of the prohibition amendment. See my article "Life, Liberty, and Liquor: A Note on the Police Power," 6 *Virginia Law Review*, 156, 179 (December, 1919). The constitutional amendment will be attacked on the ground that it infringes the rights of the states and was illegally adopted, but it is not likely that these suits will be successful.

Kansas, Ohio, New York, Illinois, Pennsylvania, Massachusetts, Texas, Iowa, Missouri, Arkansas, Montana, Nebraska, Minnesota, New Hampshire, Utah, California, Maine, North Dakota, South Dakota.

*Profiteering Legislation.* The rising cost of living led President Wilson to deliver a special address to Congress on August 8. He was frank to say that no immediate and complete remedy could be hoped for from legislative and executive action, and he suggested that so long as the transition period from war to peace continued there could be no readjustment of the financial and economic system so that prices would go down to a peace level. The President's concrete proposals were as follows:

The sale of surplus food and clothing in the hands of the government.

Publicity as to wholesale prices secured through the departments of commerce, agriculture, and labor, and the federal trade commission, if Congress would provide the necessary funds.

The extension of the Food Control Act, making it apply to more commodities and with a penalty for profiteering which would be "persuasive."

A cold storage law and a law requiring that "all goods destined for interstate commerce should in every case where their form or package makes it possible be plainly marked with the price at which they left the hands of the producer."

A federal license for all corporations engaged in interstate commerce.

Mr. Wilson pointed out, in his message to Congress on December 2, that Congress had acted on only one of these recommendations, and urged that the present Food Control Act (H. R. 8624, Public Law No. 63) be extended for a period of six months following the formal proclamation of peace, when it would become inoperative. Funds had been made available for investigations, but there was no law authorizing the expenditure for the purpose of making the public fully informed about the efforts of the government. A cold storage law passed the house of representatives on September 30 (H. R. 9521), but was not considered in the senate. Surplus foodstuffs were sold by the war department. Congress showed very little disposition to become excited over the high cost of living, and seemed to assume that the responsibility was largely that of the executive, since, by the legislation of the war, he had been granted enormous powers.

*The Appropriation Bills.* Congress did quick work with the appropriation bills left over from the short session and with necessary new

*History of appropriation bills, first session\**

BILL (H. R.) NO.	TITLE	HOUSE REPORT NO.	PASSED HOUSE	SENATE REPORT NO.	PASSED SENATE	SENT TO CONFERENCE	CONFERENCE REPORT (HOURS) NO.	CONFERENCE REPORT AGREED TO	DATE APPROVED	LAW NO.
1200	Congressional expenses.		May 23		May 29	1919		1919	June 17	2
2329	Urgent deficiency, War	3	May 22		May 23				June 5	1
2490	Risk.....	4	May 26	3	June 6	June 7	27	June 10	June 30	3
3157	Indian.....	8	June 4	16	June 18	June 20	70	June 27		†
	Agriculture (H. R. 7413	11	May 29	11	June 10	June 11	97-44	July 1	July 11	5
3478	substituted).....	12	June 7	17	June 18	June 23	94-68	July 1	July 11	6
4228	General deficiency.....	23	June 13	24	June 25	June 26	90-99-76	July 1	July 11	7
5227	District of Columbia....	26	June 10		June 12				June 30	4
5312	Army.....	35	June 16	32	June 26	June 27	89-92	June 30	July 11	8
5608	Railroads.....									
6176	Navy.....	48	June 21	52	June 28	June 30	93-98	July 1		†
	Sundry civil (H. R. 7343	118	July 17		July 18				July 19	21
7343	substituted).....	124	July 18		July 23				July 24	22
7413	Agriculture.....									
H.J. 147	Making supply laws re-	133	July 21		July 25				July 31	P. Res. 7.
	troactive.....	309	Sept. 20	273	Oct. 21	Oct. 23	424-426	Oct. 29	Nov. 4	73
9205	First deficiency for						S. Doc. 144			
	1920.....									

\* From the *Monthly Compendium*, Sixty-sixth Congress, First Session November, 1919 (W. Ray Loomis, editor.)

† Vetoes.



Table comparing by bills estimates of regular annual appropriations for the fiscal year 1921 with the appropriations made for the fiscal year 1920, during the third session of the Sixty-fifth Congress and the first session of the Sixty-sixth Congress.\*

Prepared by the clerks to the committees on appropriations of the senate and house, December 3, 1919

	ESTIMATES, 1921	APPROPRIATIONS, 1920	INCREASE, ESTIMATES 1921 OVER APPROPRIATIONS FOR 1920	DECREASE, ESTIMATES 1921 UNDER APPROPRIATIONS 1920
Agriculture.....	\$37,528,102.00	\$33,899,761.00	\$3,628,341.00	
Army.....	982,800,020.00	772,324,877.50	210,475,142.50	
Diplomatic and Consular.....	11,243,250.91	9,843,661.67	1,399,589.24	
District of Columbia.....	19,179,716.03	15,364,421.00	3,815,295.03	
Fortification.....	117,793,330.00	11,214,291.00	106,579,039.00	
Indian.....	12,994,494.27	11,131,397.03	1,863,097.24	
Legislative, etc.....	122,242,849.02	97,963,831.77	24,279,017.25	
Military Academy.....	6,778,637.20	2,277,932.20	4,500,705.00	\$42,965,584.08
Navy.....	573,131,254.80	616,096,838.88		
Pensions.....	215,030,000.00	215,030,000.00		
Post Office.....	391,713,673.00	609,466,149.00		217,752,476.00
River and harbor.....	42,941,565.00	33,378,364.00	9,463,201.00	
Sundry civil.....	906,725,387.10	607,160,207.95	299,565,179.15	
Total regular appropriations.....	\$3,440,002,279.33	\$3,035,151,733.00	\$665,568,606.41	\$280,718,060.08
Permanent annual appropriations.....	1,425,407,752.29	1,968,997,780.00		543,590,027.71
Total, annual appropriations.....	\$4,865,410,031.62†	\$5,004,149,513.00	\$665,568,606.41	\$804,308,087.79
Deficiencies.....		1,141,931,289.96		
Miscellaneous.....		1,126,478,632.41		
Grand total † (p. 84).....		\$7,272,559,415.37		

\* From the *Congressional Record*, December 4, 1919.

† This sum does not include any amount for increased compensation to government employees.

appropriations. An analysis of their legislative history is given in an accompanying table. As revised during the special session, the seven appropriation bills contained nearly a billion dollars less than the figures agreed upon at the third session of the Sixty-fifth Congress. Such a reduction was practically inevitable, since the peace time needs of the government were not so great as they were during the war, or immediately after the armistice, when it seemed that demobilization might not be so speedily effected.

Very little legislation was passed in the form of riders to the appropriation laws. The General Deficiency Act prohibited the use of money authorized by Congress for propaganda to influence legislation, and amended the Alien Property Custodian Act; the army appropriation law contained a good many provisions with regard to administrative details, but did not attempt to lay down any policy with regard to organization, and so also with the Naval Appropriation Act. The sundry civil bill (H. R. 6176) was vetoed by the President on July 11, because it did not make available sufficient funds for vocational rehabilitation. A new bill was introduced and was approved July 19. The first deficiency appropriation bill for 1920 (H. R. 9205, Public Law No. 73) contained a provision exempting farm and labor organizations from prosecution under the Sherman Anti-Trust Act. When the measure was before the house of representatives this proviso was struck out by a *viva voce* vote, but when a record vote was demanded the exemption prevailed by a vote of 201 to 30. The senate retained the proviso by a vote of 31 to 28.

Statistics as to the appropriations for 1920 and the estimates for 1921 are of some interest and are given in an accompanying table (p. 83).

‡ Net increase, estimates for 1921 over appropriations for 1920, regular annual bills.....	\$404,850,546.33
Decrease, estimates for 1921 under appropriations for 1920, permanent annual appropriations.....	543,590,027.71
Net decrease of estimates for 1921 under appropriations for 1920, regular and permanent annual appropriations.....	138,739,481.38
Decrease, grand total of estimates for 1921 under grand total of appropriations for 1920.....	2,407,149,383.75
Amount of estimated revenues for 1921.....	5,620,350,000.00
Amount of estimated postal revenues for 1921.....	415,500,000.00
Total estimated revenues for 1921.....	6,035,850,000.00
Excess of estimated revenues (exclusive of deficiencies and miscellaneous) over estimate appropriations for 1921.....	1,170,439,968.38

**Other Legislation.** An especially large number of bills and resolutions were introduced during the special session. Many of the former were to secure German cannon or field pieces for various towns in the United States; on August 2, one representative introduced ninety-eight such proposals. The resolutions were numerous because of the desire of Congress to do a great deal of investigating. The numbers of bills and resolutions introduced during the Sixty-fifth and Sixty-sixth Congresses were as follows:<sup>5</sup>

*Bills and joint resolutions introduced, and enacted into law*

**House bills and joint resolutions introduced:**

Bills, Sixty-fifth Congress.....	16,239
Bills, Sixty-sixth, special session.....	10,735
Joint resolutions, Sixty-fifth Congress.....	445
Joint resolutions, Sixty-sixth, special session.....	249

Total House, Sixty-fifth Congress.....	16,684
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Total House, Sixty-sixth, special session.....	10,984
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**Senate bills and joint resolutions introduced:**

Bills, Sixty-fifth Congress.....	5,680
Bills, Sixty-sixth, special session.....	3,457
Joint resolutions, Sixty-fifth Congress.....	230
Joint resolutions, Sixty-sixth, special session.....	127

Total Senate, Sixty-fifth Congress.....	5,910
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Total Senate, Sixty-sixth, special session.....	3,584
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Total bills and joint resolutions, both houses, Sixty-fifth Congress.....	22,594
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Total bills and joint resolutions, both houses, Sixty-sixth Congress, special session.....	14,568
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**Resolutions introduced:**

**Concurrent:**

House, Sixty-fifth Congress.....	73
House, Sixty-sixth, special session.....	38
Senate, Sixty-fifth Congress.....	32
Senate, Sixty-sixth, special session.....	17

Total concurrents, Sixty-fifth Congress.....	105
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Total concurrents, Sixty-sixth, special session.....	55
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<sup>5</sup> These figures are a revision of a table which appears in the *Monthly Compendium* for December, 1919.

Simple:		
House, Sixty-fifth Congress.....	625	
House, Sixty-sixth, special session.....	397	
Senate, Sixty-fifth Congress.....	487	
Senate, Sixty-sixth, special session.....	234	
	<hr/>	
Total simple resolutions, Sixty-fifth Congress.....		1,112
Total simple resolutions, Sixty-sixth Congress.....		631
	<hr/>	
Total, concurrent and simple, Sixty-fifth Congress.....		1,217
Total, concurrent and simple, Sixty-sixth Congress.....		686
Resolutions passed:		
Concurrent:		
House, Sixty-fifth Congress.....	26	
House, Sixty-sixth, special session.....	11	
Senate, Sixty-fifth Congress.....	6	
Senate, Sixty-sixth, special session.....	6	
	<hr/>	
Total concurrents passed, Sixty-fifth Congress.....		32
Total concurrents passed, Sixty-sixth Congress.....		17
Simple:		
House, Sixty-fifth Congress.....	228	
House, Sixty-sixth, special session.....	141	
Senate, Sixty-fifth Congress.....	320	
Senate, Sixty-sixth, special session.....	137	
	<hr/>	
Total simple resolutions passed, Sixty-fifth Congress.....		548
Total simple resolutions passed, Sixty-sixth Congress.....		278
	<hr/>	
Total all resolutions passed, Sixty-fifth Congress.....		580
Total all resolutions passed, Sixty-sixth Congress.....		295

During the special session ninety-five public laws were passed. Eleven of these were appropriation bills; thirty-six authorized the construction of bridges, and the other half, with the few exceptions mentioned in this summary, related to unimportant matters. Congress, for example, was called upon to give authority to build the Hud-

son River tunnel between New York and New Jersey; to authorize the war department to loan machine tools and instruments to trade and technical schools; to provide for the improvement of the mail service in Hawaii; to extend the cancelation stamp privilege to the Roosevelt Memorial Association; and to permit women of the Protestant Episcopal Church of the Diocese of Washington to vote and hold office.<sup>6</sup>

The American Legion and the Near East Relief were incorporated; the permanent rank of general was conferred on General Pershing; several amendments were adopted to the War Risk Insurance Act; the Federal Reserve Act was amended to permit banks to invest in the stocks of corporations engaged in the financing of exports; the number of officers in the army was increased to 18,000; \$17,000,000 was appropriated for the completion of the Alaskan Railway; and citizenship was conferred on Indians having military service. Joint resolutions provided for the appointment of an ambassador to Belgium, and increased the compensation of certain postal employees. Only six private laws and one private resolution were enacted during the session.

*The President's Illness.* President Wilson's speech-making tour on behalf of the League of Nations was begun on September 3 and came to a sudden end on September 26, when he was forced to return to Washington on account of illness. For more than a month the President was able to do only a minimum of official business and there were alarming rumors as to his condition. His direction was missed chiefly in the negotiations for the settlement of the coal strike, and the friends of the league covenant in the senate were sadly handicapped by his inability to formulate a program.

Twenty-eight bills became law owing to the failure of the President to act within ten days (exclusive of Sundays) after their receipt at the White House. He was able to veto the Prohibition Enforcement Act on October 27, but he did not approve two statutes which became law on October 22 and 25 (Public Laws Nos. 64 and 65), and he failed to sign Nos. 67 to 82 inclusive (October 28–November 18) with the exception of No. 73, the First General Deficiency Act for 1920, which was signed on November 4.<sup>7</sup>

<sup>6</sup> The act was to amend a charter granted by Congress March 16, 1886. See *Congressional Record*, August 2, p. 3789.

<sup>7</sup> The President signed four bills on October 22 (including the amendments to the Food Control Act), but failed to sign one which became law (Public No. 64) on account of the expiration of the time limit. The President approved a number of bills while he was in Paris. H. R. 2329 (war risk deficiencies) was enrolled on

In spite of the President's inability to preside over cabinet meetings or to act in the Mexican crisis, there was slight disposition to raise the constitutional question: "In case of the removal of the President from office, or his death, resignation, or inability to discharge the powers and duties of the said office, the same shall devolve on the Vice-President."<sup>2</sup>

*The Budget Bill.* In his annual address to Congress on December 4, 1917 President Wilson requested the house of representatives to "consent to return to its former practice of initiating and preparing all appropriation bills through a single committee, in order that responsibility may be centered, expenditures standardized and made uniform, and waste and duplication as much as possible avoided."

May 23, sent to the President the next day, and signed in Paris. H. R. 1200 (mileage appropriations for the house) was sent to the President on June 2 and signed in Paris June 17. The Indian appropriation bill (H. R. 2490) was sent to him June 16, and approved on June 30 on board the *George Washington*. During the short session of the Sixty-fifth Congress a number of bills were approved in Paris.

<sup>2</sup> As to the meaning of "inability" and the proper authority to determine when it exists, constitutional lawyers are not very definite. Professor W. W. Willoughby simply states the problem but does not answer it. (2 Willoughby on the Constitution, 1146.) The most elaborate discussion occurred apropos of President Garfield's illness in 1881; Senator Trumbull, Judge Cooley, Professor Dwight, and Benjamin F. Butler contributed to an interesting symposium on the question in the *North American Review*, November, 1881. Of interest also is Hamlin, "The Presidential Succession Act of 1886," 18 *Harvard Law Review*, 191. Judge Cooley said that all the circumstances would have to be taken into consideration. In times of supreme trial—such as April, 1861 or April, 1917—it would be disastrous if a President withdrew himself for days, whereas at other times, a withdrawal for weeks or even months would not be too inconvenient. Judge Cooley urged that the question of "inability" was one for Congress to determine. "It is possible," he said, "for a case to arise so plain, so unmistakably determined in the public judgment, that public opinion, with unanimous concurrence, would summon the Vice-President to act. But though this would make him the acting President *de facto* he would become acting President *de jure* only after solemn recognition in some form by Congress." It is worthy of mention that the constitutional provision above quoted does not consider the possibility of the death of the President or Vice-President subsequent to the election but prior to the inauguration. Until 1886, succession vested in the President *pro tempore* of the senate and the Speaker of the house, instead of the secretary of state, etc. as at present. At that time the president *pro tempore* did not hold over from Congress to Congress until a successor was chosen; consequently if both the President and Vice-President had died during an interim between Congresses there would have been no one to succeed. Furthermore, under this arrangement succession could vest in a member of the political party which had been defeated in the election. During Cleveland's first administration and after Vice-President Hendricks died a Republican was president *pro tempore* of the Senate.

From its establishment in 1865 until 1880 the committee on appropriations had control of all the regular appropriation bills. In that year the committee on agriculture was given the right to report the appropriations for the department of agriculture and the committee on commerce the right to report the appropriations for rivers and harbors. In 1885 the committee on appropriations lost jurisdiction over six appropriation bills which was given to five other committees of the house: the committees on military affairs (the army and the military academy bills); naval affairs, Indian affairs, foreign affairs, and post office and post roads. At the present time eight committees of the house have jurisdiction over thirteen regular appropriation bills: the committee on appropriations has charge of the deficiency measures that are necessary.

So far as the submission of the estimates is concerned the chief defects are that expenditures are not considered in connection with the revenues; Congress does not require of the President any careful financial program; the estimates submitted represent the desires of individual departments and bureaus, for which the President is not responsible, and are not harmonized with each other, and no attempt is made to prevent duplication and waste or to have the estimates conform to the condition of the treasury.

For years reform has been agitated: Garfield vigorously opposed the change to the present practice of different congressional committees; President Taft strongly indorsed the reports of his commission on economy and efficiency; and legislators like Congressmen Fitzgerald and Tawney and Senator Aldrich were in favor of a budget system. Both political parties were pledged to it in 1916, and the house passed a bill during the special session. It creates a budget bureau in the office of the President, with the responsibility of seeing that an adequate financial prospectus is presented to Congress with the estimates carefully checked. A resolution<sup>9</sup> was introduced providing for a change in the rules so that all bills appropriating money should go to one enlarged appropriations committee, but this was not acted upon. Enforcing executive responsibility is not nearly so serious a matter as

<sup>9</sup> H. Res. 168 which passed on July 31 created a special committee (Good, chairman) to devise a plan for a budget. The testimony in the hearings before the committee is of great interest. The bill reported (H. R. 9783; House Report 362) passed on October 21.

depriving certain committee chairmen of some of the powers which they now have in controlling funds for different departments.<sup>10</sup>

*Congressional Investigations and Committee Hearings.* As is natural when the political complexion of Congress changes, the majority party makes every effort to investigate the record of its opponents, but the investigating mania shown by Congress during the special session far exceeded any previous record. Nearly two hundred resolutions authorizing special inquiries or permitting regular committees to send for persons and to take testimony were introduced. Fifty-five of these were passed and their subjects ranged from those of general interest such as the investigations of the Peace Treaty leak, war department contracts and expenditures, a budget system, and war risk insurance, to the reasons for the detention in France of Robert A. Minor and the suspension of Miss Alice Wood, a Washington school teacher.

The session was marked, however, by an unusually large number of valuable hearings by various committees. The testimony on army reorganization before the senate and house committees on military affairs; Senator Kenyon's report on the steel strike; the hearings before the special house committee on the budget; the investigation of the Mexican imbroglio, and the senate and house committee hearings on the railroad question are materials of capital importance. They contain matter which is far more valuable than anything said on the floor of either house, and show that the problems before Congress have been really debated, not so much by members of Congress, as by persons appearing to present their views to the committees. The senate committee on foreign relations published hearings containing the testimony of Secretary Lansing and of the American experts on international law and the Far East; the revelations on Russia of Mr. Bullitt ("the young American" who breakfasted with Mr. Lloyd George),

<sup>10</sup> H. Res. 324, House Report No. 373. So far as "pork" is concerned the only difference under the budget system as proposed by the house committee would be that the legislation would be framed by the rivers and harbors and public buildings committees and the appropriations would go through the single appropriation committee. Speaking of the difficulty of changing the existing committee system, Congressman Frear said: "No Hottentot king or dusky Senator in the far-off cannibal islands was ever more proud of his huge earrings . . . than are some honored members of appropriation committees who have finally reached chairmanships on these powerful committees. . . . Finally entrenched in power, they possess ordinary human attributes and cannot willingly be expected to relinquish seniority rights reached only after years of patient waiting." In the Senate a special committee was appointed to devise a budget plan (McCormick, chairman; S. Res. 58; July 14, 1919) but the committee did not begin to function until after the close of the special session.



and a record of the epoch-making conference with President Wilson at the White House.

It is extremely difficult, however, to secure these reports of hearings, and thus the details of the most vigorous discussion that takes place in Congress are not available for public scrutiny except so far as reported in the newspapers. Speaking of select committees in England, President Lowell says: "They summon before them people, whose testimony they wish to obtain; but although a man of prominence, or a recognized authority on the subject, would, no doubt, be summoned at his own request, there is nothing in their procedure in the least corresponding to the public hearings customary throughout the United States, where anybody is at liberty to attend and express his views—a practice that deserves far more attention than it has yet received."<sup>11</sup>

*Congressional Procedure.* Congress was in session 160 calendar days. Of these, the house was in recess fourteen days and the senate thirty-two. The average length of a day's session in the house was five hours and forty-five minutes and in the senate five hours and two minutes. To report the proceedings, 8658 pages of the *Congressional Record* were necessary.<sup>12</sup>

In the house, much time was lost in calling the roll. Up to the end of the thirtieth week, the house had taken 240 roll calls, more than two a day. These require an average of at least a half an hour apiece, and the total therefore amounted to 21 working days of five hours and forty-five minutes each. Many of these roll calls were on points of no quorum; others were for record votes on unimportant measures. It would seem as if, with congressional business as congested as it is, and with important problems being delayed from session to session, some method ought to be agreed upon for securing a quorum or having a record vote without a delay of thirty to forty-five minutes. But the practice does not occasion any serious objection, since it affords leisure to members of the house. On several days, however, roll calls consumed practically the whole time.<sup>13</sup>

<sup>11</sup> *The Government of England*, vol. I, p. 267.

<sup>12</sup> Much of this space was of course taken up with extensions of remarks and reprints of various kinds of documents, a majority of which, perhaps, related to the League of Nations. Many *Washington Post* editorials were made available to the country through publication in the *Record*, and the views of many American citizens on the Peace Treaty were inserted in the proceedings of the senate. The *Record* frequently seemed like the *Review of the Foreign Press*, which was published by the British government during the war. Senator Williams read to the senate a long description of what would happen if the senate undertook to debate "Now I lay me down to sleep."

<sup>13</sup> See, for example, the *Congressional Record* for September 5, 1919.

One incident, however, is so significant in the light that it throws on congressional procedure that it ought to be mentioned. With the senate about to be occupied by the Peace Treaty, the house had determined upon a recess longer than three days, and a concurrent resolution providing for this had been agreed to. The four brotherhoods of railway employees on August 2 issued a peremptory demand for an immediate increase of wages, threatening a general strike in September and approving the so-called Plumb Plan for railway nationalization. President Wilson wrote to Speaker Gillett on August 1 and asked that the proposed recess of Congress might be postponed "until such time as we may know definitely the problems which confront us growing out of this critical situation." The house complied with the President's request, and the recess resolution was rescinded 235 to 4. Pending the address from the President, Mr. Mondell asked unanimous consent that the house should meet at noon on Tuesdays and Fridays, no business to be in order except the Chaplain's prayer, the reading and approval of the journal, the signing of bills and resolutions on the speaker's table, and a motion to adjourn. Members were to be notified three days before their presence was necessary, and meanwhile the house committees could continue their work.

Congressman Igoe, of Missouri, however, had pending before the committee on interstate and foreign commerce a resolution relating to the investigation by the federal trade commission of the price of shoes. He asked unanimous consent for its consideration. The majority leader refused to help him in getting it before the house, and Mr. Igoe therefore objected to Mr. Mondell's request. On Tuesday, August 5, Mr. Mondell repeated his request, and Mr. Igoe again objected. On Wednesday, upon the convening of the house, a point of no quorum was made, and Mr. Mondell moved that the house adjourn. On Thursday the point of no quorum was again made and the house adjourned. On Friday, a bare quorum was secured; the President's address was listened to, and the house adjourned.

*Unsettled Problems.* The Peace Treaties, the Mexican problem, and the Panama Canal Treaty, providing for a payment to Columbia, will occupy much time in the senate. The return of the railroads, industrial legislation, the development of foreign trade, budgetary reform, the extension of the war risk insurance bureau, army reorganization and compulsory military training, a shipping policy, the leasing of oil lands, soldier settlement legislation, and many other questions will keep Congress in session well into the summer.

## LEGISLATIVE NOTES AND REVIEWS

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**The Richards Primary.** The state of South Dakota is becoming famous as a laboratory for experiments in popular government. It was the first state to adopt the initiative and referendum, those provisions being incorporated into the state constitution by the Populist legislature of 1897 and ratified by the people at the election of 1898. The Republican legislature of 1917 took a long step towards state socialism when it met the demands of the Non-Partisan League by proposing a series of amendments under which the state may now engage in almost any industry, a program which was likewise approved by the people at the succeeding election. Recently the state has attracted further attention on account of its original and peculiar—some would say “freakish”—primary law, under which South Dakota has been the first state to take any official action with regard to the selection of candidates for the coming national campaign.

The so-called “Richards Primary” is almost exclusively the work of one man, R. O. Richards of Huron, who, as a private citizen (Mr. Richards has been a defeated candidate for United States senator and governor and has served as Republican state chairman) has taken an active interest in politics, and has devoted his talents and his means to his one hobby—the securing of responsible party government. The present South Dakota primary law, of which he is the author, is but the culmination of a series of experiments in the field of primary legislation. Its adoption can only be understood when considered in relation to the initiative and referendum, to factional contests within the Republican party, and to the persistent efforts of Mr. Richards himself.

The active agitation for the direct primary in South Dakota began in 1903, largely under the leadership of Mr. Richards. In 1904 the first use was made of the constitutional initiative in drawing up a primary measure and petitioning the legislature for its submission to a vote of the people. Although the initiative petition contained about twice the required number of signatures, the “stalwart” legislature of

1905 refused to submit the measure, as required by the constitution, and passed instead the so-called "Honest Caucus Law," retaining the old convention system with but slight restrictions. This violation of the constitution resulted in 1906 in the election of Governor Crawford and a "progressive" legislature, and the passage in 1907 of the first primary law. This law, which still retained some of the features of the convention system, continued in force, with some amendments, until 1912.

Meanwhile Mr. Richards had prepared a primary measure in conformity with his more advanced notions, secured its introduction in the legislature of 1911, but failed to secure its passage. Enough signers to an initiative petition for the same measure had, however, been obtained; it was immediately reintroduced in that form, and the legislature of 1911, remembering the lesson of 1906, submitted the measure to a vote of the people. At the election of 1912 it was adopted by a vote of nearly two to one.

The Richards primary thus enacted was the prototype of the present law, containing several very unusual features, such as the official recognition of party factions, an elaborate scheme for the initial proposal of candidates before the primary, party indorsement for appointive positions, party recall, and a postmaster primary. The law was severely criticized as being too complicated and expensive and as promoting factional quarrels within the party; and the legislature of 1913, even before the Richards law had been put into operation, submitted in its stead another initiated measure, the so-called Coffey law, which had for its purpose the repeal of the Richards law and was itself a reversion to the more orthodox type of primary. The people, at the election in 1914, refused, by a large majority, to approve the new measure and thereby sustained the Richards law.

In spite of this emphatic indorsement of the Richards primary by the people at two successive elections the legislature of 1915 enacted the so-called Norbeck primary law,<sup>1</sup> which repealed the Richards law and substituted a type of primary along the usual lines. The legislature also, taking advantage of an earlier ruling of the state supreme court that emergency measures were not subject to the referendum,<sup>2</sup> attached the emergency clause to the Norbeck law, and thus prevented the measure, with its appeal of the Richards law, from being submitted to a vote of the people—"thereby locking and bolting the door on the

<sup>1</sup> From Peter Norbeck, the present governor of South Dakota.

<sup>2</sup> *State ex rel. Lavin v. Bacon*, 14 S. D. 394 (1901); 85 N. W. 605.

people," as Mr. Richards said. The constitutional question as to whether the legislature had the right to repeal an initiated law was carried to the Supreme Court, which held that the legislature had that right, since under the provisions of the South Dakota initiative and referendum it was not expressly denied.<sup>3</sup>

Not at all discouraged at this turn of affairs, Mr. Richards immediately set about revising and perfecting his measure, and again secured its submission through the initiative and referendum at the election of 1916. At this election his measure was defeated by a very close vote (a change of 163 votes would have secured its adoption); but it was again revised, reinitiated, and resubmitted at the election of 1918, when it was adopted by a comfortable margin.

Such, in brief, is the history of the primary movement in South Dakota. The Richards law, practically in its present form, has been continuously before the people of the state since 1911, and has been submitted to a direct vote four times, failing only once to secure the popular approval. (Incidentally, it might be mentioned that the Richards primary is the only initiated law that has been ratified by the people of South Dakota during the twenty years of the initiative and referendum, although several other initiated measures have been submitted.) It has been in actual operation during one preëlection campaign, that of 1913-1914; and it is now, with some slight changes and some additional features, again being put into operation. As an experiment in popular government, the Richards primary is so different from any other primary law in existence as to deserve careful study from students of politics. In spite of its very unusual features, it seems to be little known outside the state of South Dakota; hence this analysis of its most salient provisions.

*Party Organization.* The Richards primary is a loose form of the closed primary. No preliminary party registration or enrollment is required, but separate ballots are furnished for each party, and any voter whose party affiliation is challenged must declare his allegiance under oath, stating that he is "in good faith" a member of that party and a believer in its principles "as declared in the last preceding national and state platforms."

Party committees are constituted in no unusual fashion. The county central committee is made up of one committeeman elected by

<sup>3</sup> State ex rel. Richards v. Whisman, 36 S. D. 260 (1915); 154 N. W. 707. The case was carried to the United States Supreme Court, which declined to take jurisdiction.

ballot of the party voters in each precinct, the chairman being chosen by majority vote of these committeemen and of the nominees for county and legislative offices. The state central committee is similarly made up of one committeeman elected in each county. The state chairman and the national committeeman are both elected at the state-wide primary. One unusual feature, however, with regard to party committees, is that of unit representation, that is, each party committeeman at all meetings of the committee has a vote equal to the number of votes cast at the last general election within the territory he represents (precinct or county) for his party's candidate for governor.

*Selection of Candidates and Issues.* The Richards law in this respect presents some very novel features, the machinery being somewhat elaborate and complicated, and combining to a certain extent the representative convention with the principle of direct selection. Principles rather than individuals are stressed at all times. There are six distinct steps in the process of selecting the party nominees and the party issues.

(1) Precinct initiatory election. The process of selection begins with an election in each precinct on the second Tuesday in November of every odd-numbered year, for the purpose of choosing one party committeeman and three county proposalmen for each party. The election is conducted under what the law calls the "honest caucus law plan," that is, the election is open to all the voters of the precinct, who organize themselves into a meeting, but conduct the election according to certain prescribed forms, with separate ballots for each party.

(2) County proposal meeting. The proposalmen of each party thus elected in the precincts meet separately in county convention on the third Tuesday in November following the precinct elections, organize by choosing a chairman and other officers, and elect by roll call three state proposalmen. This meeting then adjourns till a later date.

(3) State proposal meeting. These state proposalmen of each party meet separately at the state capitol on the first Tuesday in December of every odd-numbered year, and at this state proposal meeting take the first steps in the actual selection of the party candidates and issues. The meeting of each party's proposalmen is called to order by the state party chairman, or in his absence by any of the proposalmen present, and organizes by electing its own chairman and other officers. The proposalmen present constitute a quorum, and are at all times required to act "without sub-committees, as a committee of the whole, sitting in open and public session." Each proposalman has a vote equal to one-third

the number of votes cast in his county at the last general election for his party's candidate for governor; all important votes on candidates and issues are required to be by roll call; and a majority of all the votes entitled to representation is necessary for a decision.

The work of this state proposal meeting is not finally to select, but merely to propose an official set of candidates and principles to be voted upon at the party primary. The proposed platform is adopted first, and it is provided that the various planks are to be voted upon one at a time by roll call. After having in this way proposed a state platform, the meeting proceeds to select from such party platform one "paramount national issue" and one "paramount state issue," and prepares a summary of principles (national and state), limited to eight words, for a ballot heading. Finally, the meeting proposes its candidates for the various presidential (including President, Vice-President, and presidential electors), congressional, and state offices, and for party representatives (state chairman, national committeeman, and national delegates and alternates).

(a) Majority representative proposals. The principles and candidates thus selected by the majority of the state proposal meeting are called representative proposals, being made by a representative convention. These representative proposals, containing a complete list of the principles and candidates proposed, must be certified by the chairman and secretary of the state proposal meeting, and filed in prescribed form with the secretary of state on or before the 1st of January. Every candidate concerned must by that date sign a declaration of his intention to accept the nomination and the office, to adhere to the party principles, and to obey the party recall if invoked. If all these formalities are complied with, the summary of principles and the names of the candidates are placed by the secretary of state on the primary ballot.

(b) Protesting representative proposals. The majority of the state proposal meeting having proposed its set of principles and candidates, there is opportunity also for the minority to do likewise. If five or more of the state proposalmen dissent from the majority proposals, they may on or before the third Tuesday in December file protesting representative proposals, containing their principles and candidates. These proposals must be certified by the five or more protesting proposalmen, and in every other respect must conform to the requirements for the proposals of the majority. These having been complied with, the principles and candidates of this group are also placed on the primary ballot.

It should be noted that on the ballot there is no distinction in name between the proposals of the majority and minority groups, both being called merely representative proposals. The law provides, however, that the principles and candidates proposed by the majority proposalmen shall always be placed in the last (righthand) column of the primary ballot, while those of the protesting proposalmen are to be placed in the column next to the last. In case there is more than one group of protesting proposalmen, that group which first files its proposals gets its list on the ballot, "the intention being," reads the law, "to permit only two representative proposals to be printed on any one party ballot."

(4) Independent proposals. In addition to the two representative proposals, independent proposals for individual candidates may be filed, apparently without limit as to number. These independent proposals are made in the form of petitions, signed by one per cent of the party voters in the territory concerned, if for presidential, congressional, state, or district offices; or by twenty party voters, if for county or legislative offices. An unusual feature in this connection is the provision that it is unlawful to secure more than twice the required number of signatures to any petition—probably with the view of encouraging numerous independent proposals.

Candidates for legislative office in joint legislative districts (composed of more than one county) and candidates for judicial offices are required to file as independent candidates, although judicial candidates may also be indorsed by representative proposals. Other conditions are the same as for representative proposals, except that no statement of principles and paramount issue need be made unless the proposal is of a candidate for President or governor. Independent candidates are placed in the first column of the primary ballot, being given what is considered the choice position. It may also be noted that if there is no opposition to any proposed candidate, whether independent or representative, such candidate is certified as the party nominee without going before the primary election.

(5) Reconvened county proposal meeting. After the state proposal meeting has been held, the county proposalmen of each party (who met originally in November to elect the state proposalmen) reconvene at the county seat on the fourth Tuesday in December. At this meeting the county party chairman is required to present the various representative and independent state proposals that have been made, from among which the county proposalmen select and indorse the paramount



state issue which they prefer. The meeting then proceeds to the selection of representative candidates for county and legislative offices in the same manner as was done in the state proposal meeting. Each proposalman has a vote equal to one-third of the vote cast at the last general election in his precinct for his party's candidate for governor; a roll call is required upon the indorsement of the paramount issue and the selection of candidates; and a majority vote is necessary to a choice.

There are also similar provisions with regard to protesting representative proposals, the majority of the meeting having the first right, however, to propose and file its candidates and select the representative column on the ballot in which they shall be placed. All such proposals for county and legislative offices, whether independent or representative, are to be certified in the same manner as are those for state and national offices, but to the county auditor instead of to the secretary of state; and the same declarations are required of all candidates.

(6) Primary election. This final step in the selection of the party nominees and the determination of the party principles is held on the fourth Tuesday in March of every even-numbered year. The primary election under the Richards law is conducted much as other primary elections. There is a separate ballot, with a distinctive color, for each party; a plurality is required to nominate; the secretary of state and the county auditors are the chief election officers, with duties ordinarily pertaining thereto; there are detailed regulations governing the conduct of the primary and the determination of the results.

An unusual feature is provided, however, with respect to the presidential primary. The law provides that the indorsement at the primary of candidates for President and Vice-President and their national paramount issue is to have the "force and effect of instructions" to the delegates to the national convention to vote for and support such candidates and principles at least three times before supporting any compromise candidate or platform. It is further provided that presidential electors nominated in the primary "shall cast their votes in the electoral college for the candidates for President and Vice-President who were nominated by the national party convention"—an attempt, apparently, to prevent the repetition of what happened in 1912, when the Republican presidential electors cast the vote of South Dakota for Roosevelt, although Taft was the regular Republican nominee.

*Publicity.* All the studied efforts of the Richards law to make principles rather than men the issue not only between parties but also

between the factions within a party, would be useless without an intelligent public opinion; hence it is not strange that elaborate provisions for enlightening the public as to the issues form an important part of this law. These publicity provisions are among the most novel and interesting features of the Richards primary.

"Political record books" are required to be kept, one by the secretary of state and one by each of the county auditors, in which are recorded all the transactions of political parties relating respectively to state and national, and to county affairs, and including the minutes of party committee meetings, party platforms, representative and independent proposal papers, challenges and acceptances to joint debate, and party indorsements for appointments. These books do not directly provide publicity, being strictly record books, but should surely furnish a fund of useful information for the future historian of party politics.

The publicity pamphlet is no longer an altogether novel feature, but South Dakota is the first to use it for the pre-primary as well as for the pre-election campaign. The state party publicity pamphlet provided for by the Richards law is compiled by the secretary of state from the material in the political record book. In addition to the platform principles, proposals and petitions of all the party candidates, the pamphlet will contain a biography and half tone cut of any candidate who deposits \$100 for both or \$50 for either. Written arguments may also be included, limited to 800 words in support of the principles of each representative group of candidates, and to 200 words in support of any independent candidate. It is expressly provided, however, that no platform proposals or arguments shall contain any "personal attack of character" on any one. The arrangement of the material, the kind of type to be used, and other details, are carefully regulated. A copy of the pamphlet is to be mailed by each county auditor to every voter in his county forty days before the date of the primary. There is no expense to the candidates, except for the biography and cut, the expense of publication being borne by the state, that of mailing by the county.

Provisions for a series of public joint debates between the candidates for President and between those for governor are among the most novel features of the Richards primary, and are the one striking feature of the present law which was not included in that of 1912. The law requires that there be held at least one presidential and sixteen gubernatorial public joint debates between the first Monday in January and the fourth Tuesday in March; that is, pre-primary debates between

the presidential and gubernatorial candidates within each party. These debates are to be strictly discussions of each candidate's "paramount issue"—such paramount issue being defined as "one well-defined and definite principle for a public policy that shall be first filed with the secretary of state by an independent candidate proposal for president or governor, or representative proposal. Such representative paramount issue shall be expressed in not more than eight words as a summary for heading of the appropriate column on the primary ballot."

There is a definite system of challenges and acceptances provided for in the law. Challenges to debate are to be made in the following order: (1) By the independent candidate, or, if there be more than one such, by the independent candidate who first filed his proposal petition. He is not, however, required to challenge, unless there is no majority representative candidate, in which case he must challenge any other independent or representative candidate. The independent candidate is at all times permitted to designate the opposing candidate with whom he wishes to debate (if there be more than one such). (2) If the independent candidate does not avail himself of his right to challenge within the specified time, then the protesting representative candidate is required to issue such challenge to his opposing representative candidate. Challenges duly made must be accepted, but in case more than one is made to the same person, the challenged candidate need accept only one, in the following order: (1) the challenge made by an independent candidate, (2) the challenge by the protesting representative candidate, the purpose of the law being expressly stated as "always to give priority to the challenge of an independent candidate, so as to encourage leadership."

Presidential candidates may debate in person or by proxy, at their option; but candidates for governor are required to debate in person, except in case of inability, unforeseen disability, or sickness, and even then are required to be present at the debate unless a sworn physician's certificate is presented as to inability to attend on account of sickness. Failure on the part of any candidate to make or accept a challenge, when required, operates as a legal withdrawal of that candidate's name from the primary ballot; and the law distinctly provides that "such vacancy shall be filled by a candidate who will make the challenge or fill the debates, or the place shall remain vacant."

There are elaborate regulations for the conduct of these debates. Unless a more suitable time and place is designated by the challenged candidate, the debates are to be held in the court room of the county

court house at 8.30 p.m., any other public business going on at that time to give way temporarily. The arrangements for the presidential debates are made by the national committeeman or the state chairman, those for the gubernatorial debates by the county chairman of the county in which any debate is to be held. Over the latter the county chairman also presides, or he may appoint a "jurist" to preside; or if he is absent altogether, the presiding officer is chosen from the audience by majority vote of those present. The debates are restricted to the "paramount issue" of each candidate, the law expressly stipulating that "no personalities or personal imputations may be brought into the debate under any circumstances." The challenger's paramount issue is debated first, then that of the challenged candidate, and so on during the series. The candidate whose paramount issue is being debated opens and closes; the time is limited to 20 minutes for the opening affirmative argument, 30 minutes for the negative, and 10 minutes for the closing. Roberts' rules of order are to be observed.

In addition to these debates within each party during the pre-primary campaign, provision is also made for a series of twelve post-primary debates between the nominees for governor of the two largest parties (as determined by the vote at the primary). These debates are restricted to the paramount issue which was approved within the party at the primary, and are conducted in every way as those held during the pre-primary campaign. The series is to be held between September 1 and November 1 preceding the general election; the nominee of the smaller party is required to make the challenge; and failure to make or accept the challenge as required, or failure to attend and discuss the paramount issue, automatically creates a vacancy on the ticket, which as before must be filled by one who will fulfill the debating requirements or the place remains vacant.

*Party Indorsement for Appointive Positions.* Among the novel features of the Richards law is the plan for official party indorsements for appointive positions within the state, whether state or national. For positions other than postmaster, any party elector may file an application with the secretary of state, who mails a copy to each member of the state central committee of the applicant's party. This party committee, with the national committeeman, meets at the state capitol on the second Tuesday in December after the general election, for the purpose of hearing applicants and receiving written recommendations concerning them, acting always "in public session and without sub-committees, as a committee of the whole." The committee then

proceeds, by open ballot and majority vote, to indorse for the positions concerned such of the applicants as it sees fit, or such other persons "as shall be agreed upon by a majority of such committeemen present for the betterment of the public service." These indorsements by the party state committee are considered the official party indorsements, and as such are transmitted at once to the appointing authority, if for a state position, and to the President and each of the United States senators and congressmen from the state, if for a national position.

For the position of postmaster a special method of securing the party indorsement is provided through postmaster primaries, limited strictly to the municipalities concerned and to the party of the national administration in power. Such a postmaster primary may be called in any municipality, sixty days before the expiration of the postmaster's commission or immediately upon a vacancy occurring, upon seven days' notice by three party electors of the national administration in power. Any resident elector of that party may become a candidate at the primary by filing a petition with the municipal clerk, duly signed by the required number.

The postmaster primary is conducted as are other elections, the municipal clerk being the chief election officer. In case there are three or more candidates, the feature of first and second choices is made use of in order to secure a majority selection. The choice of the party voters, as expressed at this primary, is certified to the President, postmaster-general, and congressman from the district as the official party indorsement for the position of postmaster.

Candidates for all appointive positions are required to sign a declaration that they will qualify if appointed and obey the party recall if invoked.

*Party Recall.* One of the unique features of the Richards primary is that for the recall of public officials, whether elected or appointed, not by the general electorate, but by the party through which such official secured his election or appointment, and conducted as a quasi-judicial proceeding with a "jury trial." The party recall may be invoked against an official who fails to adhere to the party principles; or who is charged with misconduct, crime, or misdemeanor in office, or with drunkenness, gross incompetency, or neglect of duty. It may be invoked (1) by written petition of 33 per cent of the electors of his party, within the territory from which he was elected or appointed, or (2) by written petition of 66 per cent or more of the members of his party central committee, state or county, as the case may be.

A complaint must be filed with the recall petition, setting forth specific charges. Jurisdiction to hear the complaint and to try and determine the charges is vested in the party state or county central committee, according to the character of the office. The date for the hearing is fixed by the party chairman, who also presides at the trial. The committee members are specially sworn; counsel may be employed by both sides; witnesses are examined and evidence is taken; and the hearing in general takes the form of a judicial proceeding.

If 90 per cent or more of the committee members concur, the charges are sustained, with no right of appeal to any other tribunal. Official notice of the committee's decision is served upon the officer concerned, with a formal request for his resignation. Failure on the part of the officer to resign, when thus formally requested, is declared by the law to constitute "proof of his moral misconduct and corrupt conduct." The office is thereupon to be "declared vacant by such party organization," evidently meaning the party committee which conducted the trial.

This somewhat doubtful provision is further clouded by the fact that no provision is made for filling the vacancy so "declared," and it is difficult to see how the party organization could enforce its recall, if the official refused to resign. It may also be noted that the recall applies only to officers elected or appointed as party candidates, and no method is provided for the recall of those who may have secured their positions independent of any party.

*Miscellaneous Features.* There are provisions regarding contests, limitation of campaign expenses, illegal voting, and corrupt practices, that are in no respect startling departures from the provisions on these subjects found in other laws. Vacancies in party positions and in nominations are to be filled by the appropriate party committees. Vacancies in representative proposals before the primary are, however, to be filled in a rather unusual manner, in that the chairman of the proposal meeting is to designate the new candidate. When we recall that representative proposals include the proposals of both the majority and minority groups of proposalmen, this provision seems to give the chairman the right to fill a vacancy occurring even in the proposal of the opposing faction.

The expense of the Richards primary is also worth noting. In addition to the complicated and voluminous machinery of initial and primary elections, the novel features of the law are all a source of expense to the taxpayers. The proposalmen and the party committee-

men are paid a mileage of five cents for attendance upon all necessary meetings, and the candidates required to debate receive a mileage of ten cents for all necessary travel in that connection. The expense of the publicity pamphlet is borne by the state and county, that of the postmaster primary by the municipality concerned.

Comment on the Richards law is not the purpose of this article. It may be that some of its provisions will not stand the test of a close constitutional scrutiny. But the very novelty of its outstanding features—the initial proposal of candidates by representative conventions, the idea of “unit representation,” the emphasis on the “paramount issue,” the scheme of public joint debates, the plan for constituting the party state committee into a sort of civil service board, the postmaster primary, the party recall—will secure the keenest interest on the part of students of government in the operation of the new South Dakota law. It may well be that there is still something to be learned in the field of party legislation.

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**Post-War Legislation.** Before the declaration of war by the United States in 1917, and during the continuance of the conflict, scores of laws were enacted by the various states to meet abnormal war conditions. With the conclusion of the war an entirely different set of problems has emerged which has led to new types of legislation. These new laws are designed to facilitate the reassimilation of soldiers, sailors and marines, to avert the disloyal tendencies to un-Americanism displayed during and since the war; and to provide for a permanent historical record of our achievements in the war.

**Soldiers' Reception.** Seven states, including Kansas, Iowa, Arizona, Oregon, Nebraska, Wisconsin and Wyoming made appropriations for the purpose of welcoming returning soldiers at New York, contributing to their comfort, entertainment and convenience, and in some cases providing for their transportation home.<sup>1</sup> The funds so appropriated were expended in most cases by an official committee of citizens appointed by and representing the governor; the Arizona fund was intrusted to the Rocky Mountain Club of New York. The funds so expended ranged in amount from \$5,000 to \$35,000 per state.<sup>1</sup>

<sup>1</sup> Kansas, Session Laws, 1919, p. 380; Iowa, Session Laws, 1919, p. 388; Arizona, Session Laws, 1919, p. 7; Oregon, Session Laws, 1919, p. 251; Nebraska, Session Laws, 1919, p. 1159; Wisconsin, Session Laws, 1919, ch. 22; Wyoming, Session Laws, 1919, p. 3.

*Discharge Papers.* Kansas, Iowa, Oklahoma, Tennessee, Nevada, Michigan, Wisconsin, and California provide in general for the recording, free of charge or at a nominal cost, of the discharge papers of any honorably discharged soldier, sailor or marine. In Kansas such papers are filed with the adjutant general; in most other states with the county recorder or other corresponding officer. Iowa, in addition, provides that the transcript of any public record shall be furnished free of charge to any soldier, sailor, marine or his dependents. Tennessee is the only state legislating on this subject which prescribes a fee, but the record so entered is declared to be legal evidence of such discharge. Michigan and California further provide that all transcripts of records pertaining to pensions, insurance or annuities shall be made free of charge.<sup>2</sup>

*Educational Facilities.* A number of states gave legal expression to the handicaps experienced by soldiers who were obliged to interrupt their college courses, and made the necessary compensating provisions accordingly. Maine shortened the prescribed period of study for law students from 3 to 2 years; and Michigan made a substantially similar provision. Iowa extended to soldiers, sailors and marines who had arrived at the age of 21 school privileges for a period equal to their enlistment. Illinois provided for the awarding of scholarships free of charge in the state university and normal school to honorably discharged soldiers. Oregon created a fund out of which any soldier or sailor may be paid \$25 per month and not to exceed \$200 per year for a period of 4 years while attending a higher institution of learning. North Dakota has a similar fund and pays \$25 per month for as many months as the soldier-student was in the service. South Dakota provided that a teacher's certificate does not lapse by reason of absence in the service; and Indiana enacted a law containing similar provisions. South Dakota also provided free tuition to all soldiers attending any of the state schools. New York made certain adjustments relative to Cornell scholarships and dental students' degrees and created 450 state scholarships.<sup>3</sup>

<sup>2</sup> Kansas, Session Laws, 1919, p. 379; Iowa, Session Laws, 1919, pp. 45, 49, 74; Oklahoma, Session Laws, 1919, p. 147; Tennessee, Session Laws, 1919, pp. 414, 440; Nevada, Session Laws, 1919, p. 656; Michigan, Session Laws, 1919, pp. 432, 656; Wisconsin, Session Laws, 1919, p. 465; California, Session Laws, 1919, pp. 138, 160, 269.

<sup>3</sup> Maine, Session Laws, 1919, p. 15; Michigan, Session Laws, 1919, p. 617; Iowa, Session Laws, 1919, p. 182; Illinois, Session Laws, 1919, pp. 922, 923; Oregon, Session Laws, 1919, p. 809; North Dakota, Session Laws, 1919, p. 398; South Dakota, Session Laws, 1919, pp. 46, 113; Indiana, Session Laws, 1919 p. 591; New York, Session Laws, 1919, pp. 790, 1204, 1602.



*Memorials.* Legislative activity providing for the erection of suitable memorials celebrating and perpetuating the achievements of the army and navy was pronounced. The memorials provided for include libraries, public buildings, tablets, monuments and various other designs, and authority was conferred on the state as well as local governments to erect memorials. Colorado, Delaware, Oklahoma, Alabama, Utah, North Dakota, Nevada, South Dakota, Missouri and California provided for the erection of a central memorial at the state capitol and made appropriations ranging from \$5,000 to \$500,000. Iowa, Kansas, Connecticut, Idaho, Indiana, Missouri, Tennessee, Illinois, Utah, North Dakota, Nebraska, Michigan and Wisconsin authorized cities, towns, counties or villages to appropriate money, levy a tax or submit to the electors the question of issuing bonds to provide for the erection of a memorial. Idaho and Indiana also provided state commissions to prescribe the design of local memorials, and Idaho and Missouri provided state aid for each county raising a similar amount in the construction of a county memorial. Rhode Island, New Hampshire and New York authorized certain towns to expend money in celebrations and the erection of memorials. Missouri appropriated \$25,000 for the erection of a memorial in France.<sup>4</sup>

*Medals.* Missouri, Wyoming, Oregon, Illinois, Nebraska and New York provide medals or certificates of suitable design to be awarded to all honorably discharged soldiers, sailors and marines.<sup>5</sup>

*Burial.* Connecticut, Idaho, Illinois, New Jersey, Michigan, Indiana and New York provide for the burial of indigent world war veterans at public expense.<sup>6</sup>

<sup>4</sup> Colorado, Session Laws, 1919, p. 236; Delaware, Session Laws, 1919, p. 38; Oklahoma, Session Laws, 1919, p. 4; Alabama, Session Laws, 1919, p. 18; Utah, Session Laws, 1919, pp. 19, 355; North Dakota, Session Laws, 1919, pp. 327, 329; Nevada, Session Laws, 1919, p. 351; South Dakota, Session Laws, 1919, p. 389; California, Session Laws, 1919, p. 1139; Iowa, Session Laws, 1919, pp. 191, 193, 302; Kansas, Session Laws, 1919, p. 374; Connecticut, Session Laws, 1919, pp. 2867, 2883; Idaho, Session Laws, 1919, p. 242; Missouri, Session Laws, 1919, pp. 77, 79; Tennessee, Session Laws, 1919, p. 35; Illinois, Session Laws, 1919, pp. 66, 778, 779; Nebraska, Session Laws, 1919, p. 1031; Michigan, Session Laws, 1919, p. 563; Wisconsin, Session Laws, 1919, pp. 24, 390, 430, 501, 544, 598, 648; Rhode Island, Session Laws, 1919, pp. 227, 242; New Hampshire, Session Laws, 1919, ch. 41; New York, Session Laws, 1919, pp. 53, 965.

<sup>5</sup> Missouri, Session Laws, 1919, p. 77; Wyoming, Session Laws, 1919, p. 112; Oregon, Session Laws, 1919, p. 680; Illinois, Session Laws, 1919, p. 945; Nebraska, Session Laws, 1919, p. 1029; New York, Session Laws, 1919, p. 220.

<sup>6</sup> Connecticut, Session Laws, 1919, p. 2793; Idaho, Session Laws, 1919, p. 43; Illinois, Session Laws, 1919, p. 369; New Jersey, Session Laws, 1919, p. 202; Michigan, Session Laws, 1919, p. 304; New York, Session Laws, 1919, pp. 206, 773.

*Soldiers' Home.* Nebraska, Rhode Island, Michigan and Indiana provide for the admission of veterans of the late war to soldiers' homes on the same basis as soldiers of former wars.<sup>7</sup>

*Tax Exemptions.* Maine, Iowa, Indiana and California provide exemptions for soldiers from certain forms of taxes and tax penalties.<sup>8</sup>

*Civil Appointments.* Nine states, including Kansas, Illinois, New Jersey, Michigan, South Dakota, Wisconsin, Indiana, California and New York have given soldiers preference in all public and civil appointments, while New Jersey includes world war veterans in the list eligible to retire from the public service after a period of 20 years.<sup>9</sup>

Kansas provides that any person in service may become a candidate for any elective public office, notwithstanding he is absent, by filing a statement with the proper officer. Connecticut exempts from examination by the commissioner of motor vehicles any person in the military service or any auxiliary organization, and admits any honorably discharged soldier or sailor as an elector by the presentation of his certificate of discharge. Delaware and New York permit soldiers to peddle, and Indiana to hunt and fish without a license. Oregon provides a meeting place free of charge in the camps and armories of the state; Michigan provides for the incorporation of the United States World War Veterans; and repealed an act of 1891 which authorized 10 or more persons who had served in the German army to incorporate regiments or companies of the *Deutscher Landwehr-Unterstützungs-Verein*. New Jersey makes it a misdemeanor for any person not eligible to wear the badges or insignia of the veterans of the foreign wars.<sup>10</sup> Colorado and Tennessee have designated November 11, armistice day, as a legal holiday. South Dakota has extended its moratory provision on certain debts of soldiers.<sup>10</sup>

<sup>7</sup> Nebraska, Session Laws, 1919, p. 354; Rhode Island, Session Laws, 1919, p. 113; Michigan, Session Laws, 1919, p. 426.

<sup>8</sup> Maine, Session Laws, 1919, p. 98; Iowa, Session Laws, 1919, pp. 240, 436; California, Session Laws, 1919, p. 305.

<sup>9</sup> Kansas, Session Laws, 1919, p. 378; Illinois, Session Laws, 1919, pp. 287, 290, 292; New Jersey, Session Laws, 1919, pp. 289, 290, 599; Michigan, Session Laws, 1919, p. 402; South Dakota, Session Laws, 1919, p. 373; Wisconsin, Session Laws, 1919, ch. 18; California, Session Laws, 1919, p. 1350; New York, Session Laws, 1919, pp. 825, 844, 1793.

<sup>10</sup> Kansas, Session Laws, 1919, p. 254; Connecticut, Session Laws, 1919, pp. 2681, 2841; Delaware, Session Laws, 1919, p. 49; New York, Session Laws, 1919, pp. 101, 891; Oregon, Session Laws, 1919, p. 574; Michigan, Session Laws, 1919, pp. 641, 730; New Jersey, Session Laws, 1919, p. 116; Colorado, Session Laws, 1919, p. 507; Tennessee, Session Laws, 1919, p. 83.

*Soldiers' Aid.* Of the more substantial forms of treatment accorded to the soldiers and sailors of the world war, the most notable are those providing for reemployment, rehabilitation, direct aid and soldiers' settlements which have been undertaken in a systematic way by several states. Kansas, by a legislative resolution, requested all employers to display honor flags in their establishments showing the number of men in their employ who have returned from military service to their former positions or better ones. The honor flag consists of a square field of blue with one white star for each employee reinstated and one red star for each soldier employed who was not formerly engaged.<sup>11</sup>

Maine, Connecticut, California, North Dakota, Oregon, Michigan, and Wisconsin provide a direct form of aid.<sup>12</sup> In Maine, cities, towns and plantations are authorized to raise money by taxation or otherwise to relieve the necessitous circumstances of the dependents of soldiers, sailors and marines; not to exceed \$4 per week is paid to the wife or father or mother, not to exceed \$1.50 to each child under 16 years, and not more than \$10 for all; for the amounts so expended, the municipality is reimbursed by the state, but amounts in excess of the state allowance may be raised by the local governments. The aid provided by Connecticut for soldiers, sailors and their dependents is determined by a board of control, and corporations as well as public bodies are empowered to contribute for the war relief of soldiers and their dependents. Moreover, the state treasurer is directed to purchase the bonds or notes of the United States in any amount not to exceed 2½ million dollars, the interest on which is to be paid to organizations of soldiers for food, clothing, medical aid, care, relief and funeral expenses either of their own members or the widows and dependents of members. Oregon created a soldiers' and sailors' commission of 5 members to provide care and financial aid to soldiers and appropriated \$100,000 to carry on the work. The state of North Dakota created a returned soldiers' fund by the levy of a half mill tax to enable soldiers to procure homes or farm homes; each soldier is paid \$25 for each month he was in the service. Michigan includes world war soldiers in the relief supplied by counties. Wisconsin provides for the expenditure of \$30 per month for the relief of convalescent soldiers, a county tax to assist

<sup>11</sup> Kansas, Session Laws, 1919, p. 453.

<sup>12</sup> Maine, Session Laws, 1919, p. 168; Connecticut, Session Laws, 1919, pp. 2682, 2686, 3011; California, Session Laws, 1919, p. 275; North Dakota, Session Laws, 1919, p. 398; Oregon, Session Laws, 1919, p. 13; Michigan, Session Laws, 1919, p. 650; Wisconsin, Session Laws, 1919, chs. 42, 109, 345, 452, 542, 551, 699.

needy soldiers, and towns may raise not to exceed \$150 for any destitute soldier. The adjutant general is authorized to secure data as to the educational qualifications of discharged soldiers, and high school students who would have graduated but for service are given diplomas.

Missouri and New Jersey created soldiers and sailors employment commissions to secure reemployment for soldiers, and Indiana imposed a similar duty on a newly created employment bureau. Illinois requires the employees of 5 or more laborers to report between January 1 and 15 to the director of labor the number of employees who left to join the colors and the number reemployed; the director is required to investigate the reemployment of soldiers and to promote their speedy restoration to industry. Illinois, New Jersey and California made provision for the rehabilitation of the physically handicapped, by providing for their treatment in hospitals, establishing a school of rehabilitation, training them in selected occupations and securing employment.<sup>13</sup>

*Land Settlement.* One of the most important pieces of legislation was the so-called soldiers' land settlement acts which were passed in substantially similar form by Maine, Colorado, Idaho, Missouri, Tennessee, Oregon, Utah, Nevada, South Dakota, Wyoming and California.<sup>14</sup> Coöperation is provided in all cases with the federal government in the drainage, irrigation or reclamation of lands for soldiers; the establishment of town sites, roads, schools, and churches; the advancement of loans to encourage settlement; the establishment of rural homes; and securing profitable employment. Boards were created to administer the settlement and liberal appropriations are provided.

C. K.

*Americanization.* The war has taught us the need of a more united people, speaking one language, thinking one tradition, and holding allegiance to one patriotism—America. The Americanization of the immigrant had been the goal of social workers for a long time, and the assimilation of our alien population has been the normal course,

<sup>13</sup> Missouri, Session Laws, 1919, ch. 427; New Jersey, Session Laws, pp. 19, 138; Illinois, Session Laws, 1919, pp. 533, 534; California, Session Laws, 1919, p. 824.

<sup>14</sup> Maine, Session Laws, 1919, p. 218; Colorado, Session Laws, 1919, p. 501; Idaho, Session Laws, 1919, p. 90; Missouri, Session Laws, 1919, p. 705; Tennessee, Session Laws, 1919, p. 520; Oregon, Session Laws, 1919, p. 550; Utah, Session Laws, 1919, pp. 249, 298; Nevada, Session Laws, 1919, p. 343; Wyoming, Session Laws, 1919, p. 242; California, Session Laws, 1919, pp. 838, 1182.

except where it has been hampered by foreign-organized and foreign-directed efforts. The surprise has been in the demonstrated loyalty of our large foreign and heterogeneous elements, but the need of more unity in our habits of thought and expression has been shown. To this end, hastened undoubtedly by the war, many state legislatures have adopted, during the past year, measures providing for the use of English only as the language for American schools and public affairs, and other laws for the promotion of loyalty and improved standards of citizenship.

The Minnesota legislature<sup>1</sup> has best stated the American ideal in its definition of the public school: "A school, to satisfy the requirements of compulsory attendance, must be one in which all the common branches are taught in the English language, from text-books in the English language, and taught by teachers qualified to teach in the English language. A foreign language may be taught when such language is an elective or a prescribed subject of the curriculum, but not to exceed one hour in each day." In other words, as stated in Arkansas, Maine and West Virginia:<sup>2</sup> "The basic language of instruction in the common school branches" in public and private schools shall be English, but any other language may be taught as such. Illinois<sup>3</sup> best defines the reason for making English this basic language of American schools, "Because the English language is the common as well as official language of our country, and because it is essential to good citizenship that each citizen shall have or speedily acquire, as his natural tongue, the language in which the laws of the land, the decrees of the courts, and the announcements and pronouncements of its officials are made, and shall easily and naturally think in the language in which the obligations of his citizenship are defined, the instruction in the elementary branches of education in all schools in Illinois shall be in the English language."

Other states,<sup>4</sup> Colorado, Indiana, Iowa, Kansas, Nebraska, Oklahoma, Oregon and South Dakota, provide that the English language shall be exclusively the medium of instruction in all schools, public, private, or

<sup>1</sup> Minnesota, Session Laws, 1919, ch. 319.

<sup>2</sup> Arkansas, Session Laws, 1919, Act 488; Maine, Session Laws, 1919, p. 147; West Virginia, Session Laws, 1919, p. 45.

<sup>3</sup> Illinois, Session Laws, 1919, p. 917.

<sup>4</sup> Colorado, Session Laws, 1919, ch. 179; Indiana, Session Laws, 1919, ch. 18; Iowa, Session Laws, 1919, ch. 198; Kansas, Session Laws, 1919, ch. 257; Nebraska, Session Laws, 1919, ch. 249; Oklahoma, Session Laws, 1919, ch. 141; Oregon, Session Laws, 1919, ch. 19; South Dakota, Session Laws, 1918, pp. 47, 48.

parochial, below the high school, and then unless the subject should be a foreign language, and that all textbooks shall be printed in the English language.

South Carolina<sup>5</sup> specifically makes English the basic language of parochial schools. Indiana<sup>6</sup> prohibits by name the use of German as a medium of instruction in elementary schools or any commissioned high school. Idaho<sup>7</sup> makes it unlawful to teach any subject in the grades or in the high school in any language except English.

California, Rhode Island, South Dakota and Utah,<sup>8</sup> with little variation in the wording of their laws, require all persons between the ages of sixteen and twenty-one who can not speak, read or write the English language, with the facility of those who have completed the fifth grade, to attend evening schools from four to eight hours a week until such ability is acquired.

Delaware and Maine<sup>9</sup> make it optional with the public school authorities as to whether they will maintain such evening schools. Utah makes the state board of education the judge of the person's ability in using the English language. In Colorado<sup>10</sup> no person who has not completed the eighth grade is permitted to attend any school where common branches are taught in any language except English while the public schools are in session.

The commissioner of education of New York<sup>11</sup> is directed to divide the state in zones and appoint teachers as may be necessary to promote and extend educational facilities to illiterates and non-English speaking persons.

Nebraska, Tennessee and Washington go yet a step further and disqualify aliens from being licensed or employed as teachers in the public schools; and Washington provides, too, that dismissal for lack of patriotic teaching bars a teacher from the schools in the state in the future.<sup>12</sup>

<sup>5</sup> South Carolina, Session Laws, 1919, p. 206.

<sup>6</sup> Indiana, Session Laws, 1919, ch. 18.

<sup>7</sup> Idaho, Session Laws, 1919, p. 493.

<sup>8</sup> California, Session Laws, 1919, p. 1047; Rhode Island, Session Laws, 1919, p. 212; South Dakota, Session Laws, 1919, p. 154; Utah, Session Laws, 1919, p. 285.

<sup>9</sup> Delaware, Session Laws, 1919, p. 452; Maine, Session Laws, 1919, p. 148.

<sup>10</sup> Colorado, Session Laws, 1919, p. 599.

<sup>11</sup> New York, Session Laws, 1919, p. 1620.

<sup>12</sup> Nebraska, Session Laws, 1919, ch. 250; Tennessee, Session Laws, 1919, p. 223; Washington, Session Laws, 1919, ch. 38.

*Legal Publications.* In South Dakota and Nebraska, all legal notices must be published in papers printed in the English language. Nebraska repealed an act requiring the publication of the proceedings of the board of county commissioners in a foreign language. Minnesota repealed an act authorizing certain legal publications in German newspapers. Maryland repealed a law requiring certain laws to be published in the German language.<sup>13</sup>

*Instruction.* Iowa required all public and private schools to teach American citizenship and a minimum requirement of American history and civics in the high schools. In Kansas, all elementary public, private and parochial schools must give courses of instruction in civil government, United States history and patriotism, and the duties of a citizen. New Jersey required all high schools to give courses of instruction in community civics and the problems of American democracy and all elementary schools are required to give courses in geography, history and civics of New Jersey. In South Dakota, all public and private educational institutions must give one hour of instruction each week in patriotism and in the singing of patriotic songs and the reading of patriotic addresses. Nebraska requires all private, public, parochial and denominational schools to give courses in American history and civil government, and the county or city superintendent is required to inspect private, denominational and parochial schools to see that no un-American propaganda is carried on.<sup>14</sup>

Connecticut created a department of Americanization in the board of education and any town is authorized to appoint a town director of Americanization. Delaware created a reconstruction commission of 7 members to devise plans for child welfare, community organization and other subjects affected by the change from the activities of war to those of peace. Michigan created a community council commission of 26 persons to consider all questions connected with reconstruction. Oklahoma created an Americanization committee consisting of the governor and 6 appointive members who are required to see that all school officials are informed and foreigners made aware of the opportunities of

<sup>13</sup> South Dakota, Session Laws, 1919, p. 296; Nebraska, Session Laws, 1919, pp. 67, 309; Minnesota, Session Laws, 1919, ch. 118; Maryland, Session Laws, 1918, ch. 349.

<sup>14</sup> Iowa, Session Laws, 1919, p. 536; Kansas, Session Laws, 1919, pp. 352, 367; New Jersey, Session Laws, 1919, p. 304; South Dakota, Session Laws, 1919, p. 45; Nebraska, Session Laws, 1919, p. 349.

acquiring instruction in the language, institutions and duties of American citizenship.<sup>15</sup>

*Aliens.* In Nebraska no alien may be appointed to or hold any public office; only natural born or fully naturalized persons are permitted to teach school; it is unlawful for any teacher to wear a denominational dress or garb in the school room; all meetings, except religious or lodge meetings, must be conducted in English; and the heads of all public institutions, sheriffs and chiefs of police are required to ascertain the name, age and nationality of all aliens in custody and report to the governor. No aliens may teach school in Michigan unless they have declared their intention of becoming citizens. In Nevada, no alien is eligible for employment in a public position and soldiers are given preference. In Colorado, California and Nevada no hunting licenses are issued to aliens, and in Tennessee all persons who teach in the public schools must be citizens.<sup>16</sup>

*Flag laws* enacted prohibit the desecration, mutilation or improper use of the American flag and forbid the carrying or display of the red or black flag. Laws prohibiting the desecration of the flag were passed by Arizona, Connecticut, Maine, Oklahoma and Wisconsin. Wisconsin and Tennessee require the display of the flag in schools.<sup>17</sup> The carrying or display of the red or black flag or any ensign, symbol or standard expressing opposition or hostility to organized government has been prohibited by laws passed by Arizona, Delaware, Idaho, Michigan, Colorado, Connecticut, Alabama, Iowa, Oklahoma, Oregon, Kansas, Utah, Nebraska, Wisconsin and Indiana.

<sup>15</sup> Connecticut, Session Laws, 1919, p. 2955; Delaware, Session Laws, 1919, p. 146; Michigan, Session Laws, 1919, p. 268; Oklahoma, Session Laws, 1919, p. 466.

<sup>16</sup> Nebraska, Session Laws, 1919, pp. 382, 383, 991, 1018, 1020; Michigan, Session Laws, 1919, p. 392; Nevada, Session Laws, 1919, pp. 296, 297; Colorado, Session Laws, 1919, p. 416; Tennessee, Session Laws, 1919, p. 223.

<sup>17</sup> Alabama, Session Laws, 1919, p. 767; Arizona, Session Laws, 1919, pp. 8, 11; Connecticut, Session Laws, 1919, pp. 2703, 2829; Delaware, Session Laws, 1919, p. 615; Idaho, Session Laws, 1919, p. 360; Iowa, Session Laws, 1919, p. 219; Maine, Session Laws, 1919, p. 156; Michigan, Session Laws, 1919, p. 179; Kansas, Session Laws, 1919, p. 244; Nebraska, Session Laws, 1919, pp. 186, 916; Oklahoma, Session Laws, 1919, pp. 113, 133; Oregon, Session Laws, 1919, p. 49; Colorado, Session Laws, 1919, p. 573; Utah, Session Laws, 1919, p. 350; Indiana, Session Laws, 1919, ch. 125; Tennessee, Session Laws, 1919, p. 579; Wisconsin, Session Laws, 1919, chs. 113, 125, 369.



*Syndicalism.* Eight states, most of them west of the Mississippi (Iowa, Michigan, Nebraska, Nevada, Oklahoma, Oregon, South Dakota and Utah) have passed laws which define and provide penalties for criminal syndicalism and sabotage.<sup>18</sup>

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**War History Records.** In at least thirty-five states special provision has been made for collecting and compiling all available records relating to the part they played in the world war. The work was originally sponsored either by the state councils of defense, acting upon the request made early in the war by the National Board for Historical Service, or by state historical societies and historical commissions.

Under the stress of war time conditions and without any official recognition on the part of the states, the work had to be carried on for several months as best it could. As the scope of the work broadened, however, its importance was quickly recognized, and when the state legislatures convened in January, 1919, eighteen states made special provision for enlarging the activities of the historical work, and voted funds for this purpose.

The following appropriations were made in the states mentioned: The State Historical and Natural History Society of Colorado, \$5000; the department of war records of the Connecticut State Library, \$10,000; the Illinois State Historical Library, \$20,000; the Indiana Historical Commission, \$20,000; the Iowa War Roster Commission, \$20,000; the Michigan Historical Commission, \$45,000; the Minnesota War Records Commission, \$10,000; the war history bureau of the New Jersey State Library, \$10,000; the Adjutant General of Nebraska, \$10,000; the North Dakota War History Commission, \$2,500; the Adjutant General of Ohio, \$50,000; the State Historian of Oregon, \$2500; the Wisconsin War History Commission, \$37,500.

Special appropriations were also provided for this work—the exact amount not stated—to the Adjutant General of Massachusetts, the Nevada Historical Society, the State Historian and Adjutant General of New York, and the North Carolina Historical Commission. In

<sup>18</sup> Iowa, Session Laws, 1919, p. 493; Michigan, Session Laws, 1919, p. 452; Nebraska, Session Laws, 1919, p. 1058; Nevada, Session Laws, 1919, p. 33; Oklahoma, Session Laws, 1919, p. 110; Oregon, Session Laws, 1919, p. 25; South Dakota, Session Laws, 1919, p. 43; Utah, Session Laws, 1919, p. 347.

Texas the work is being financed by the state university, \$12,500 having been set aside for this purpose.

The scope of the work as outlined in most of the states provides for compiling a roster of all men that were in the service, the collection and cataloging of all original records such as the correspondence and reports of the state councils of defense, the Liberty Loan drives, Red Cross work, the records of the Food and Fuel Administrations, and other organizations engaged in war work.

In addition to the work of collecting the original war records, provision has been made in several of the states to publish one or more volumes giving the history of the state during the war period. The greater part of the actual publication work however, will have to be deferred until additional state aid has been provided.

JOHN W. OLIVER.

*Indiana Historical Commission.*

## FOREIGN GOVERNMENTS AND POLITICS

EDITED BY FREDERIC A. OGG

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**Electoral Reform in France and the Elections of 1919.**<sup>1</sup> Unusual interest attaches to all of the continental elections of recent months—the first to be held after the long postponements caused by the war; but the elections in France derive special importance from the new electoral law of July 12, 1919, under which they were held.

After a nine-year contest, the elements which have demanded *scrutin de liste*, or election on a general departmental ticket, instead of *scrutin d'arrondissement*, or election by small districts, have come off victorious. Each of the two systems prevailed at various times during the Restoration, the Second Republic, and the Second Empire. Upon the establishment of the Third Republic, the *scrutin d'arrondissement* was decided to be the more satisfactory method, and it was maintained until the ministry of Gambetta. The great-souled statesman from the Midi believed that the *arrondissement* method tended to petty politics, and succeeded in imposing upon the country the list system with the department as the unit. Unfortunately, the system did not at this time have an opportunity to show its worth, for it lasted only four years, i.e., from 1885 to 1889. The Boulanger affair so aroused the government that in self-defense it brought about a return to the *arrondissement* plan. For, as an English publicist declared, "if the *scrutin de liste* did not lay the egg of Boulangism, it helped to hatch it."

Not until 1907 did agitation for electoral reform again assume such proportions as to lead the Chamber of Deputies to set up a committee to consider the question. This committee reported a scheme which combined the *scrutin de liste* with a plan of proportional representation. In 1909 the chamber passed a resolution favoring the establishment of both *scrutin de liste* and proportional representation; but no law on the subject was enacted. The Briand ministry of 1910 outlined a program

<sup>1</sup> The text of the electoral law of July 12, 1919, is printed in the *Revue Politique et Parlementaire*, August 10, 1919; the *Guide de l'Electeur*, a circular issued by the minister of interior in explanation of the law, in *Le Temps*, November 6, 1919.

embodying the two proposals; and in the ministerial declaration the premier declared that the electoral area must be broadened so that the interests of the nation might be made to predominate over those of the district; and that while in a democracy the majority must rule, the government was favorable to proportional representation in so far as the adoption of that principle could prevent the suppression of really important minorities. The Monis and Caillaux cabinets were both short-lived, and their energies were absorbed by the German *coup* at Agadir.

The Poincaré ministry obtained a favorable vote on the question in the chamber, and the new Briand ministry formed at the election of M. Poincaré to the presidency attempted to force the bill through the senate. Under the leadership of MM. Clemenceau and Combes, the upper chamber, however, refused to pass the measure; and the downfall of the Briand ministry resulted on this question in February, 1913. The Barthou cabinet gave its best efforts to the enactment of the three-year service law, and before it had a chance to turn its attention to electoral reform it gave way to the Radical-Socialist ministry of Doumergue. This cabinet was less favorably disposed to the idea; and since the elections were coming on, nothing further was done. In the elections of April, 1914, the issue was clearly before the country, and the results unmistakably indicated the people's desires. Over five million votes were cast for candidates who were known to be in favor of electoral reform, and 378 deputies out of 502 promised their constituents to support an electoral reform bill embracing proportional representation.

An inevitable effect of the outbreak of the great war was to push the question into the background, and not until the spring of 1919 was the issue again raised. The "proposition Dessoie," a bill for electoral reform embracing the *scrutin de liste* and a system of proportional representation, came before the chamber, and passed, April 18, 1919, by a vote of 277 to 138. However, it was the senate that had opposed the issue before, and it was known that there was still a strong current of opposition in that body. The upper chamber, however, no longer dared resist the perfectly plain popular mandate, and the bill passed with some modifications on June 26. There were 134 votes in favor and 87 opposed. Rather than prolong the discussion, the chamber accepted the senate bill unchanged, and on July 8, by a vote of 328 to 103 (71 not voting), the measure became law. M. Aristide Briand, who had so long fought for electoral reform, made the final speech in

favor of the bill. "I would not go so far as to say," he declared, "that if the *scrutin d'arrondissement* should be maintained the republican régime would be imperilled. But with a *scrutin* less personal, based upon a larger circumscription, we shall have a broader and more elevated policy. . . . It is imperative that the electorate of France rise above the petty quarrels of yesterday to envisage the great questions upon whose solution depends the restoration of our country."

The new law consists of nineteen articles and may be summarized as follows: Each department elects a deputy for every 75,000 inhabitants of French nationality (a major fraction giving a right to an additional deputy), and each department elects at least three deputies. The present departments were to be the basis for the first elections; but thereafter every department electing more than six deputies must be divided into circumscriptions each electing at least three deputies. No person may be a candidate in more than one district. Candidates are to be grouped, on a party basis, in lists; every one must sign a declaration duly legalized; and no list may contain names in excess of the number of seats to be filled. Every isolated candidate is considered as forming a separate list. Each candidacy must be supported by the signatures of at least one hundred electors of the district, and the lists must be deposited at the prefecture at least five days before the election. Two days before the vote is taken the names of the registered candidates must be posted on the voting booths by the prefectural authorities.

The method of determining the results of the election is very complicated, and the minister of the interior has issued an explanatory bulletin, which has been made the basis of the explanation here given. In the first place, all candidates obtaining an absolute majority of the votes cast are declared elected, up to the number of seats to be filled. If seats still remain unfilled, they are apportioned after the following method: (1) the *electoral quotient* is obtained by dividing the number of votes cast in the electoral area by the number of deputies to be elected, after deducting all unmarked or incorrectly marked ballots; (2) the *average* of each list is obtained by dividing the total number of votes cast for all the candidates on that list by the number of candidates on that list; (3) each list receives seats according to the number of times the electoral quotient is contained in its average; and (4) in each list the seats are allotted to the candidates who have received the largest votes.

To illustrate, let us take a department which is to elect six deputies, and whose total number of voters is 60,240. All candidates receiving as many as 30,121 votes, i.e., an absolute majority of the whole vote cast, are forthwith declared elected, up to the number of seats to be filled. To ascertain which other candidates have been successful (if any seats remain), we must apply the *electoral quotient*. Dividing the *total vote* by the number of deputies to be elected, we find the electoral quotient to be 10,040. Let us suppose that four lists, A, B, C and D, are presented, with the following results:

	A	B	C	D
Candidate 1.....	32,645	18,125	15,247	5,164
Candidate 2.....	29,827	16,247	14,629	4,032
Candidate 3.....	29,640	15,822	12,172	3,292
Candidate 4.....	25,274	12,659	8,624	1,123
Candidate 5.....	18,401	8,404	6,018	1,119
Candidate 6.....	12,524	4,031	5,101	1,082
Totals.....	148,311	75,288	61,791	15,812
Average.....	24,718	12,547	10,298	2,635

It is evident that the first candidate of list A is elected, because he has an absolute majority of all the votes cast. Thereafter, each list will receive as many seats as its average contains the electoral quotient, i. e., list A will receive two seats, since its average contains the electoral quotient twice; list B will receive one seat; list C will receive one seat; and list D will receive none. Four seats have thus been allotted by the proportional method, and one has been obtained by absolute majority. But the department is allowed six seats; and the final one is accorded to the list having the largest average, namely, list A.

After the seats are thus assigned to the lists, they are assigned to the candidates in each list in accordance with the number of votes they have individually received. Thus in our example the first, second, third and fourth candidates of list A, and the first candidate of list B and list C would be elected. In case of a tie within a list, the eldest candidate gets the seat.

The law prescribes that no candidate may be declared elected unless his vote is greater than one-half of the average of the list to which he belongs. Furthermore, if the number of persons voting is not greater than one-half of the number registered, or if no list obtains the elec-

total quotient, no candidate is to be declared elected. Under these circumstances a new election must be held two weeks later; if in this election no list obtains the electoral quotient, the seats are assigned to the candidates receiving the largest vote. However, it can readily be seen that it is the purpose of the law (and the results at the recent elections have justified the expectations) to reduce the *ballotage*, or second balloting, to a minimum.

Although the law makes drastic changes, the new scheme is still far from an exact system of proportional representation, such as that identified with the name of Hare; and it remains to be seen whether it is superior to the Belgian list system, whose faults it is supposed to remedy. The law tends to strengthen the party at the expense of the individual, to force small groups to combine, and to encourage the elector to vote a straight ticket.

Efforts were made to combine the anti-Socialist vote on one list of candidates in each district, representing the *Bloc National Republicain*; and in many districts such a list representing a combination of Republican groups was arranged. But in a considerable number of districts there was more than one list bearing a title which indicated such a union; and generally there were at least two, and often as many as three or four, lists of Republican candidates for one district. At the same time there were not infrequently two or more lists of Socialist candidates.

At the elections on November 16, 1919, there appears to have been a substantial increase in the total Socialist vote, from 1,400,000 in 1914 to 1,700,000 in 1919. But under the new law the result was a very decided victory for the moderate group, especially the *Bloc National Republicain*. The Progressives and Republicans of the Left gained about 100 members; while the Socialist Radicals lost more than 80 seats and the Socialists about 40. In Paris, the Unified Socialists obtained only 10 seats out of 54. In one Paris district the *Bloc National Republicain* elected the entire 14 members, with an average of 150,000 votes, although the Unified Socialist list had an average of 112,000 votes.

M. Clemenceau, who has consistently opposed proportional representation on the ground that the foundation of democratic government is the clearly defined formula of action of a well-established majority—and who in his notable Strasbourg speech of November 6 asked if this was the hour “to fabricate in an incoherence of votes, such as has never before been seen, an electoral system whose avowed end is to reduce the majority for the benefit of minorities, some of whom are outspoken in their destructive tendencies”—has been most agreeably disappointed.

The extremists of the Socialist parties and candidates who had shown bolshevist tendencies were entirely kept out of the new chamber. Probably the most noteworthy defeat in the election was that of M. Jean Longuet, leader of the Socialist Extreme Left. Among the eminent Radical Socialists to go down to defeat were M. Messimy, former minister of war, and M. Franklin-Bouillon, chairman of the foreign relations committee of the last Chamber, who urged rejection of the peace treaty.

M. Briand, one of the best-known leaders of the Republican majority, and one who has been talked of as a possible successor to M. Clemenceau, carried his list to an overwhelming victory. His program may well be considered the majority program of the new chamber. It affirms the advisability of modifying the constitutional laws so as (1) to provide for the election of the President of the Republic on a wider basis; (2) to introduce constitutional guaranties against confusion between legislative and executive powers, but at the same time to allow the President to play a larger and more important rôle; (3) to reduce the amount of paper money in circulation; (4) to eliminate all taxation hindering production; (5) to modify all rigid departmental rules interfering with the rapid rehabilitation of the devastated areas. The program promises a study of the labor problem from the viewpoint of both masters and men. The lists headed by Captain André Tardieu, former High Commissioner to the United States; M. George Mandel, confidential private secretary to M. Clemenceau, and M. René Viviani, former premier, were also returned with heavy majorities. Among other notable men who were elected are M. Albert Lebrun, former minister of blockade and the invaded regions (the position held at present by M. Tardieu); M. André Lefevre, former minister of finance; Captain René Fonck, the aviator; M. Leon Daudet, leader of the Royalist Association, and General Castelnau.

The new chamber contains 626 deputies, and over half of its number have been elected for the first time. Eighty-three members of the old chamber were killed in battle, and a large number of the others did not enter their names for reelection. Among the noteworthy features of the installation of the new chamber was the reappearance, after forty-eight years, of deputies from Alsace-Lorraine. The first session of the new chamber, on December 8, was, however, the occasion, not only of a rousing welcome to the twenty-four deputies from the regained provinces, but also of a vociferous demonstration against the Socialists. It was only after a quarter of an hour of loud jeering that M. Albert



Thomas was able to read the Socialist declaration. The chamber voted to placard throughout France the speeches of Premier Clemenceau, Deputy Siegfried (the oldest member of the chamber), and M. François (the youngest member), who spoke for Alsace-Lorraine, while it completely ignored the speeches of the Socialist orators, MM. Thomas and Varenne.

Early in January elections were held for the Senate by the departmental and municipal councils, to fill the seats of two-thirds of the members whose terms had expired, and other vacancies caused by deaths and resignations. These also resulted in a decided victory for the moderate groups, although the Socialist party, for the first time, is represented in the upper chamber.

The regular election for President of the Republic, by the national assembly of both chambers, was held on January 17. M. Clemenceau, whose retirement from the ministry was expected, allowed his name to be presented; but he was defeated in a close vote, at the preliminary caucus, by M. Paul Deschanel, president of the chamber of deputies; and at the formal election M. Deschanel was chosen by a large majority.

This was followed by the resignation of the Clemenceau cabinet; and a new cabinet was installed, with M. Millerand as prime minister.

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**Swedish Parliamentary Elections, 1919.** The elections to the upper chamber of the Swedish Riksdag, in July, 1919, cannot claim any large share of the world's attention. None the less, being the first parliamentary elections in any of the neutral European countries since the armistice, they have some interest as an indication of the political temper of the northern neutrals at the close of the war.

The 150 members of the upper chamber are elected for a term of six years by the county councils (*Landstings*) of the 25 counties (*Läns*), as well as by the councils of the larger towns. The members of the local councils are popularly elected under a system of proportional representation, and the same system is, in turn, used by the members of the local councils in choosing the members of the upper branch of the Riksdag. The constitution provides for overlapping terms, with one-sixth of the members of the chamber elected each year. In the early summer of 1919, however, the king exercised a prerogative seldom used, and, because of its opposition to the eight-hour day, dissolved the

upper house, thus making necessary an election of the entire membership at one time. The chamber when dissolved consisted of 86 Conservatives, 43 Liberals, 19 Social-Democrats, and 2 Left Socialists. The new house is made up of 39 Conservatives, 10 representatives of the new Peasants' Alliance, 8 members of the new Farmers' National Alliance, 41 Liberals, 48 Social Democrats, and 4 Left Socialists. No elections were held for the lower house, and its membership continues to consist of 71 Conservatives, 68 Liberals, and 97 Social Democrats. The present ministry, with Nils Eden as premier, rests upon a coalition of the Liberals and the Social Democrats.

The matters of principal interest in connection with the elections are the workings of the proportional representation system, the increased strength of the Socialist groups, and the growth of the farmer parties. The Swedish form of proportional representation is the familiar list system, except that the voter may include any candidate under any party label. Ballots having no party indication are regarded as forming a distinct group known as the free group. The seats allotted to a constituency are divided among the groups according to the d'Hondt rules, and the seats won by each group are distributed among the candidates in the group in accordance with the principles of proportional representation. Detailed figures gathered from Swedish dailies<sup>1</sup> of July 12 to 29 furnish the complete returns for 21 *län*s outside of Stockholm, and show that the elections resulted in a distribution of the seats in the chamber almost exactly in the same proportion as the members of the several *Landstings* are distributed among the various parties. The following table shows how well the system of proportional representation worked in this election, at least as far as 21 *län*s are concerned.

	CONSERVATIVES	PEASANTS' ALLIANCE	FARMERS' NATIONAL ALLIANCE	LIBERALS	SOCIAL DEMOCRATS	LEFT SOCIALISTS	TOTAL
Distribution (in percentages) of members of 21 <i>Landstings</i> .....	27	7	7	27	25	7	100
Distribution (in percentages) of seats from 21 <i>län</i> s in the new chamber .....	26	8	7	27	27	5	100

The Socialist and the Liberal percentages would, of course, be higher, and the Conservative percentages lower, if the figures from Stockholm and other cities were included.

<sup>1</sup> *Dagens Nyheter* and *Folkets Dagblad Politiken*, both of Stockholm.

The Social Democratic gains, which were made almost entirely at the expense of the Conservatives, are most striking. In the 21 *län*s studied, the only instance of a decrease in the Social-Democratic representation was in Norrbotten. But even there the loss was not to the older parties, but to the Left Socialists. The Left Socialists have an independent organization and are supporters of the Third International Socialist Congress.

The agricultural classes have been without direct party representation since the fusion of the Agricultural party with the Conservatives several years ago; and the two new parties—the Peasants' Alliance and the Farmers' National Alliance—are manifestations of the desire of the farming classes for political expression. The two organizations have essentially the same program; they remain separate apparently because of the inability of the leaders to coöperate. They are agreed that the aim of the agrarian movement is to awaken the agricultural classes to the need of united action in order to protect the interests of the food producers, and thereby to promote the general welfare of the country and strengthen the foundations of society.<sup>2</sup> The attitude of the Agrarians toward the Social Democrats is similar to the attitude of the farmers' parties to labor parties the world over; that is, one of suspicion and almost open hostility. The Socialists are demanding the socialization of the land, and on this question, as well as on most others, the Agrarians will vote with the Conservatives. There is little hope in Sweden of coöperation between the agricultural and labor groups, in spite of the fact that they have many common interests.

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<sup>2</sup> Stockholm letter to *Nordst jernan* (New York).

## NOTES ON INTERNATIONAL AFFAIRS

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**The Treaty of Peace with Austria.** In drafting the treaty of peace with Austria, the allied and associated powers, though enabled to apply most of the principles and incorporate many of the provisions of the treaty with Germany, found themselves confronted with preliminary problems somewhat different from the difficulties attending their earlier deliberations. In the case of Germany, though her rulers had abdicated and the stability of the new government was imperilled by internal disorder, yet it was upon a state still tolerably coherent that the Peace Conference could impose its terms. The armistice had indeed been concluded after a military decision; in a sense, Germany had been beaten to her knees. But her vast dominion had not felt directly the ravages of the war. With the lifting of the blockade and the importation of raw materials, her industries would readily revive. Her territorial integrity was substantially intact. The population was homogeneous; no bonds could be stronger than their common speech and traditions; while much of the old sympathies and allegiance survived, favoring if not the Empire, at least a German Republic.

But once the armistice had discredited the military and political power that held the Austro-Hungarian Empire together, that artificial structure was not long in succumbing to inherent forces of disruption. With the removal of the monarch, the dynastic tie was gone; and besides this bond, imperial unity had depended chiefly on the power of repression. It was to be expected that a state, embracing the remnants of so many kingdoms and principalities loosely strung together and inhabited by men so diverse in race, speech and culture, should burst violently asunder the moment the sole barrier to dismemberment, the restraining hand of the ascendant races, began to lose its international prestige. The desire for self-determination, long acutely felt, found its opportunity and asserted itself on all sides. Instead of the single imperial entity that had accepted the armistice negotiations, the Peace Conference faced an empire in dissolution and found itself apportioning

the scattered fragments among some seven autonomous kingdoms and republics.

In dictating terms to Germany, the foremost necessity had been to exact the fullest measure of reparation that her promise of industrial revival could bear, and to insure such effective disarmament that Europe might escape the nightmare of another aggression at least for a generation to come. But after the dismemberment of Austria-Hungary, the possibility of adequate reparation for her transgressions had dwindled almost below computation; and though the rise of so many new and ill-consorting states by no means guaranteed the peace of Europe, the military menace of the Hapsburgs had vanished forever. Hence, in liquidating the confused affairs consequent upon this disruption, the most pressing problems were the delimitation of what was left of the Austrian state as such, the regulation of its relations to the new states arising on its ruins, and the disposal of the former Empire's non-European possessions. With the identity of the new Austrian state thus clearly established, the question of reparations could be solved after a study of its resources by a commission, and securities against future disorder were available through disarmament on principles already adopted by the Peace Conference in dealing with the German situation.

The Austrian treaty follows the same outline as the German, and in many places is identical, except for the change in names. The preamble, however, is more detailed than in the German summary; it frankly ascribes the origin of the war to the former Austro-Hungarian government, and further intimates that, as that monarchy has now ceased to exist, its obligations must be assumed by its successor, the Austrian Republic. In their counter-proposals to the draft treaty, the Austrian delegates objected that, in view of the dissolution of the Austro-Hungarian monarchy, Austria ought not to be treated as an enemy state at all; and that, in consequence, she ought not to be made in any special way inheritor of the obligations in regard to reparation, to which the Austro-Hungarian monarchy would be liable, did it still exist.

To this "fundamental misconception," the conference, in its covering letter accompanying the final terms, replied that the war had been precipitated by the Austro-Hungarian ultimatum to Serbia, requiring the acceptance of demands which involved a virtual surrender of its independence; that this ultimatum was no more than an insincere excuse for beginning a war for which the late autocratic government af

Vienna, in close association with the rulers of Germany, had long prepared, and for which it considered the time had now arrived; and that the then Austro-Hungarian government, refusing all offers of a conference of conciliation on the basis of Serbia's reasonable reply, had immediately opened hostilities against Serbia, thereby deliberately setting light to a train which led directly to universal war. For these misdeeds of a government which was their own and which had its home in their capital, the people of Austria could not now escape responsibility: they had never endeavored to cure the militarist and domineering spirit of the Hapsburgs; they had made no effective protest against the war; they had not refused to assist and support their rulers in its prosecution; the war had been acclaimed on its outbreak in Vienna, the people of Austria were its ardent supporters from start to finish and they did nothing to dissociate themselves from the policy of their government and its allies until they were defeated in the field.

In the preamble and throughout the treaty, Austria is recognized under the name of the "Republic of Austria." In the counter-proposals, the Austrian delegates, with an eye to annexation possibilities then under discussion at Vienna, constantly speak of "German Austria." To this designation, the Allies' note demurred, and insisted on the adoption of the term they had imposed. To frustrate the campaign for annexation and a "Greater Germany," a specific article in the treaty makes the independence of Austria inalienable otherwise than with the consent of the Council of the League of Nations and obligates Austria, in the absence of such consent, to abstain from any act which might directly or indirectly compromise her independence.

The text of the treaty comprises 381 articles. As in the case of the German instrument, it includes as its first integral part the League of Nations covenant, which Austria agrees to accept, though it is only by a subsequent vote of the other members that she can be admitted to the league.

With an illustrative map, the second part of the treaty delimits the boundaries of the new Austria in detail. The western and north-western frontiers facing Bavaria and the western frontier facing Switzerland and Lichtenstein remain unchanged as of August 3, 1914. Cessions of territory require minute demarcation in the case of Czechoslovakia, Italy, the Klagenfurt area, the Serb-Croat-Slovene state and the Hungarian Republic. To give effect to the treaty descriptions, joint boundary commissions, composed of a majority appointed by the

disinterested Allies, and one member each by Austria and the other state concerned, are created by the treaty and empowered to trace these boundaries on the ground; to these commissions, the various states interested undertake to furnish all necessary information.

The northern frontier facing Czechoslovakia follows the existing administrative boundaries formerly separating the provinces of Bohemia and Moravia from those of Upper and Lower Austria, subject to certain minor rectifications, notably in the regions of Gmünd and Feldsberg and along the river Morava. In defining this boundary, the Allies tried to secure to Czechoslovakia a complete system of communications, and therefore departed from the historical frontier of Bohemia to assure west and east communications to southern Moravia, and in the Gmünd region to give Bohemia a junction of the two large railroad lines that constitute its chief channels of trade.

The frontier with Italy begins at the Reschen Pass on the Swiss frontier and follows in general the watershed between the basins of the Inn and the Drave on the north and the Adige, Piave and Tagliamento on the south. This line, which runs through Brenner Pass and the peak of the Signori (*Dreiherrenspitze*), includes in the Italian frontiers the valley of Sachsen and the basin of Tarvis. East of the Tarvis region, the Austrian frontier follows the Karawanken Mountains to a point southeast of Villach, then runs north of the Worthersee, the towns of Klagenfurt and Volkersmarkt, thence along the north of the Drave in such a manner as to leave to the Serb-Croat-Slovene state the town of Marburg and to Austria Radkersburg, just to the north of which latter place the line will join the Hungarian frontier.

The disposition of the Klagenfurt basin, which lies to the south of this line, will be determined by plebiscites to be organized in two zones of that area under a joint commission within three months after the treaty comes into effect. In case a majority of the population votes for union with Austria, the southern frontier of Austria will continue along the Karawanken Mountains to a point southeast of Eissenkappel, thence northeast, passing east of Bleiburg, traversing the Drave just above its confluence with the Lavant, and then rejoin the frontier already traced.

In the first draft of the treaty, the eastern frontier facing Hungary was left unchanged. In deference, however, to vigorous representations on the part of Austria, the conference finally concluded that the Odenburg region of Hungary should, chiefly on ethnological grounds, as its population of several hundred thousands is preponderantly

German, be included within the Austrian frontier. Accordingly, the old administrative boundary, from a point west of Pressburg, was projected south through the Neusiedler See and thence southwest until it hits the historic frontier north of Hartsberg. With respect to the more northerly portion of the boundary between Austria and Hungary, the Allies desired to guarantee access to the sea for the Czechoslovak state and therefore provided that Pressburg should have such access assured by transit across Hungarian as well as Austrian territory.

Thus by the recognition of the independence of Czechoslovakia and the Serb-Croat-Slovene state, and by the cession of other territories which previously formed part of the Austrian Empire, Austria is reduced to a state of six or seven million people inhabiting a territory of five or six thousand square miles.

Of the "gross injustice" of this dissolution and distribution, the Austrian delegation, warmly supported by the national press, made bitter complaint, particularly as to Bohemia, Western Hungary, Styria, Southern Carinthia and the Tyrol. The loss of her industries, Austria could never survive. They urged further the perilous responsibility assumed by the Entente in subjecting "four and a half millions of German Austrians to foreign domination." The Austrian Chancellor, Dr. Karl Renner, specifically declared that the partition "would create another hotbed of war such as the Balkans have been."

So carefully, however, had the experts of the allied powers, in tracing the boundaries of the future Austrian republic, weighed every historical, geographical, ethnological, economic and political consideration—so states the covering letter of the Allies accompanying the revised version of the terms—that the only concessions that could be accorded to the numerous objections and counter-proposals were the Odenburg region, mentioned above, and the return to Austria of Radkersburg which the tentative draft had included within the Serb-Croat-Slovene frontier. Defending the cession to Italy of parts of the Tyrol, the powers replied that they had been impressed by the fact that for decades the Italian people had suffered from a menace deliberately directed at their heart by the retention in Austro-Hungarian hands of military outposts commanding the Italian plains, and hence they had thought it best to accord to Italy the natural frontier of the Alps, which she had so long demanded.

In this decision, it is worthy of remark, the principle of self-determination, so prominent throughout the peace negotiations, seems de-



liberately disregarded, the prospective functions of the League of Nations and its guaranty of territorial integrity are overlooked, and the conference takes a backward step in the renewed emphasis on strategic military frontiers. On this whole matter of partition, it is a grave question of statesmanship whether the cause of European peace has been advanced by the Conference's official recognition of the absolute independence of the new states already given over to rivalry and mutual suspicion. It is believed by many that it might have been possible to devise some practicable scheme of federation with local autonomy for the several states. In the absence of a centralizing influence the present settlement perpetuates the animosity between Teuton and Slav, and creates another Balkan problem in the center of the European world.

In a series of constructive measures, denominated "Political Clauses" in the treaty and designed to establish the new order in Europe, Austria recognizes and accepts the frontiers of Bulgaria, Greece, Hungary, Rumania, the Serb-Croat-Slovene state and the Czechoslovak state as at present or ultimately determined by the Allies. In favor of the Allies, too, she renounces all her rights and titles over territories formerly belonging to her which, though outside the new frontiers of Austria, have not as yet been assigned to any state. She recognizes further the complete independence of the Czechoslovak state, including the autonomous territory south of the Carpathians, of the Serb-Croat-Slovene state, and of all territories which formed part of the former Russian Empire. Austria accepts definitely the annulment of the Brest-Litovsk treaty, of all treaties and agreements concluded with any Russian governments or political groups since the revolution of November, 1917, and of the treaties of 1839, by which Belgium was established as a neutral state and her frontiers fixed. Austria likewise adheres to the abrogation of the neutrality of the Grand Duchy of Luxemburg, and consents in advance to all international agreements reached as to it, together with all the arrangements made with Germany concerning the territories whose abandonment was imposed on Denmark by the treaty of 1864.

To the protests of the Austrian delegation against the provisions governing their relations to the new states, the allied and associated powers contended in reply that the dissolution of the monarchy and the consequent disabilities which Austria must endure were the direct outcome of that fatal policy of domination, a system for maintaining the ascendancy of the German and Magyar peoples over a majority

of their fellow-subjects, for which the people of Austria were themselves to blame. "This policy," said the Allies, "led to those irredentist movements along the frontiers of Austria and Hungary which kept Europe in a ferment of unrest. It led to the growing dependence of Austria-Hungary on Germany, and consequently to the subordination of the Austro-Hungarian policy to the German plans for domination. . . . The policy has borne its inevitable fruit in the fact of partition, and it is this partition that lies at the root of Austria's troubles to-day."

In the Austrian treaty, the problem of reparations, in view of her obvious inability to pay in full, sinks to somewhat secondary importance. Austria accepts, as a matter of course, the responsibility of Austria and her allies for causing the loss and damage to which the allied and associated governments and their nationals have been subjected as a consequence of the war imposed upon them by the aggression of Austria-Hungary and her allies by land, by sea and from the air. But the treaty recognizes that her resources are not adequate, after taking into account the permanent diminution of such resources resulting from the creation of new states and from other provisions of the treaty, to make complete reparation. Bearing in mind these disabilities, the Austrian subsection of the inter-allied reparations commission will notify Austria before May 1, 1921 of the extent of her liabilities and of the schedule of payments for the discharge thereof during thirty years. As immediate reparation, Austria shall pay during 1919, 1920 and the first four months of 1921 "a reasonable sum which shall be determined by the commission." At stated intervals, three bond issues are to be made and the amounts divided by the Allies in equitable proportions determined upon in advance.

Recognizing the right of the Allies to ton-for-ton replacement of all ships lost or damaged in the war, Austria agrees to deliver within two months to the reparations commission all merchant ships and fishing boats belonging to nationals of the former empire, together with 20 per cent of her river fleet. In part reparation, she must devote her economic resources to the physical restoration of invaded areas, and, where injured governments so desire, animals, machinery and other equipment destroyed by Austria must, according to her ability, be replaced in kind. As an immediate advance, specified numbers of live stock, milch cows, heifers, bulls, calves, bullocks, sows, draft horses and sheep must be delivered to Italy, Serbia and Rumania within three months after ratification. Provision is also made for the

claims of invaded or ceded territories to records, documents, works of art, scientific material and the historic possessions of the Austro-Hungarian Crown. As for certain specified artistic treasures, spoils of past wars of the House of Hapsburg, a special committee of three jurists is to decide the question of restitution.

By way of further reparation, Austria must pay the total cost of the armies of occupation so long as maintained and, without consent of the reparations commission, no gold may be exported before May 1, 1921. The Austro-Hungarian pre-war debt, specifically secured on railways, salt mines and other property, is distributed among all the states arising out of the dismemberment on the basis of the value of the property transferred. The unsecured pre-war bonded debt is to be similarly assumed by all the states, in the ratio their revenues for the three years before the war bore to those of the whole empire, excluding Bosnia and Herzegovina. Except for war-debt bonds held by nationals of the separated territories, Austria alone assumes the entire war-debt of the former government. All currency notes of the former Austro-Hungarian bank are to be withdrawn from circulation in the separated territories and redeemed by the reparations commission in the immediate liquidation of the bank. Each state acquires title to all former royal and government property located within its borders, and the assessed value thereof is to be credited to Austria on the reparation account. Similar property of predominantly historic interest and associations may be transferred without payment. Besides surrendering sundry financial advantages in the surrounding states, Austria agrees to deliver to the Allies the gold deposited as security for the first issue of Turkish currency notes; she foregoes all benefits accruing from the Bucharest and Brest-Litovsk treaties, and renounces in favor of the allied and associated governments all other claims against her former allies.

In the matter of punitive reparation, the section on penalties is reproduced from the German treaty except that, instead of demanding the trial of the former Kaiser, specific provisions require the coöperation of the new states in the prosecution before Entente tribunals of any of their nationals charged with crimes against the laws and customs of war.

As security against future military aggression, and as part of a universal plan "to render possible the initiation of a general limitation of the armaments of all nations," the Austrian army is to be reduced within three months to thirty thousand men, and compulsory military

service is supplanted by voluntary enlistment. All officers must be regulars, those newly appointed engaging to serve at least twenty consecutive years; and a twelve-year enlistment is required of all noncommissioned men. Munitions of war may be neither imported nor exported, and the domestic manufacture of war-materials is restricted to a single factory under control of the state. The naval and air forces are practically wiped out. The treaty prescribes the scrapping of all vessels of war under construction; submarines, even for commercial purposes, are proscribed. For three months after the conclusion of the treaty, the Allies will exercise supervision over even the commercial use of the high-power wireless station at Vienna. Besides the immediate demobilization of all existing aerial forces, wide categories of naval and aviation material are declared surrendered to the Allies, and henceforth no Austrian national may enlist in the army, navy or air service of any foreign power.

For further immediate realization of the disarmament ideal, apart from the promise of general disarmament incorporated in the covenant of the League of Nations, the Council of Four had already fixed in the first draft of the Austrian treaty the relative strengths of the armies which all the eastern states inheriting parts of the Hapsburg monarchy should maintain. This restriction evoked a vehement protest from the lesser states. The Yugoslavs in particular asserted that it was unfair to limit their armaments and yet leave their great rival, Italy, with complete freedom in this respect. The Poles, who were firmly convinced that they might be compelled at no distant date to defend their independence, did not wish to see themselves and their natural allies restricted in the means of defense, and they also demanded the elimination of this provision. In compliance with this demand, the limitation, so far as it affected all the states but Austria, was withdrawn by the Entente powers.

In the principles incorporated for the protection of minorities, Austria acknowledges that her obligations in this respect are matters of international concern over which the League of Nations has jurisdiction. She assures complete protection of life and liberty to all inhabitants of Austria, without distinction of birth, nationality, language, race or religion, together with the right to the free exercise of any creed. Similarly, all Austrian nationals are to be equal before the law. No restrictions are to be imposed on the free use of any language in public or private, and reasonable facilities are to be afforded to Austrian nationals of non-German speech for the use of their own

language before the courts. Like protection is thrown round minorities in the matter of schools, which are to give instruction in the children's own tongue and to share equitably in the public funds. Austria is not precluded, however, from making the teaching of German obligatory in all schools. These provisions are to be embodied in the fundamental law as a bill of rights under the protection of the League of Nations. To the same purpose, Czechoslovakia, the Serb-Croat-Slovene state and Rumania agree to embody in a treaty with the principal allied and associated powers such provisions as may be deemed necessary to protect all minorities and to insure freedom of transit and equitable treatment for the commerce of all nations.

To these provisions establishing racial, religious and linguistic liberty in all the countries affected by the treaty, the Rumanians entered an impassioned protest, seconded by the Yugoslavs and the Czechoslovaks, with mild support from Premier Venizelos for Greece. They charged these minority provisions were an infringement of their sovereignty, in that outside powers obtained a measure of control over the peoples of the Balkans; that the treaty further sought to establish an outside force to which discontented elements in the Balkan states could appeal over the heads of their own governments, making some nations superior and placing others—in this case, the Balkan nations—in an inferior position: not that they were unwilling to carry out the religious, racial and linguistic principles enunciated in the treaty, but that they preferred to carry them out themselves, without being under outside compulsion. In a response for the Allies, President Wilson upheld the provisions as essential to an absolutely just peace: the mistreatment of minorities had been a frequent cause of war, and it was desirable to eliminate that cause. As the great powers had made the greatest sacrifices in the world conflict, and had freed the smaller peoples, to whom they had ceded large territorial areas, the great powers felt that they had a right to lay down certain fundamental principles which they believed necessary for the peace which the powers had won and intended to maintain.

As in the case of the German clauses relating to the inhabitants of Alsace-Lorraine, constructive safeguards protect former Austro-Hungarian nationals acquiring nationality among the Allies. Their contracts are maintained subject to cancelation by their governments, and in undertakings constituted under Austro-Hungarian law in territories detached from the former empire, Austria must recognize new agreements by the Allies and transfer all necessary documents and

information. In the same territories, property of Austrian nationals is to be restored to its owners free from any measures of liquidation or bans imposed since the armistice, and contracts between Austrians and nationals of the new states are reaffirmed without option of cancellation. In return for reciprocal obligations to supply certain raw materials, supplies of coal are insured to Austria from Poland and Czechoslovakia, upon which she is dependent. Guaranties of freedom of transit, similar to the German provisions and including postal, telegraphic and telephonic services, grant Austria transit privileges through all former Austro-Hungarian territory in order to insure her access by land and water to the Adriatic.

The foregoing summary embraces a number of modifications introduced into the economic settlement in response to the observations of the Austrian delegation. The Allies further reminded the delegation that under the League of Nations, to which it hoped Austria could be admitted at an early date, further protection for all small communities, including the new Austria herself, was provided by the treaty of peace. No longer should powerful empires be permitted to threaten with impunity the political and economic life of lesser states. Strictly humanitarian ideals were to dominate the reparations commission; the vital interests of each community overshadowed every other consideration, and the commissioners were empowered to permit every reasonable mitigation required, for example, by the Austrian food situation.

In a set of miscellaneous measures of constructive intent, Austria agrees to all allied arrangements with Germany, Hungary, Bulgaria, and Turkey; renounces all pecuniary claims against any power signing the treaty; and accepts all decrees of allied prize courts, and conventions relating to traffic in arms. In return, the Allies undertake to continue the missionary work of any mission properly falling to them in the division of Austria's former foreign possessions.

The last main constructive measure, as in the German prototype, provides for the creation, maintenance, procedure and fundamental principles and ideals of an international labor organization. The treaty strikes at the root of the world problem in declaring that, as the League of Nations has as its object the establishment of universal peace, such a peace can be established only if it is based on social justice the world over. With that intent, the treaty recommends, in proposals made familiar in recent years by the American Federation of Labor, nine concrete objectives for industrial reform on an international

scale. Though not claiming completeness or finality for this program, the treaty expresses the conviction that even this beginning will confer lasting benefits on the wage-earners of the world.

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**Recent Important Articles from Scientific Journals.** *Criminal Responsibility of Individual Offenders Against the Law of Nations.* The chief weakness of international law is, as everyone knows, the lack of adequate sanctions. This weakness was abundantly demonstrated during the late war. In the effort to discover more effective means of enforcing observance of its commands and injunctions, many writers are now proposing the application of the criminal law to individual offenses against its rules. That is to say, it is proposed to try and punish specific offenses against the laws of war that are at the same time violations of the criminal law, whenever the offenders fall into the hands of the injured party. During the past two years a considerable amount of periodical literature has appeared in which the application of this remedy is advocated. Among the more important contributions of the kind may be mentioned an article by Professor Paul Pic of Lyons entitled *Violations des Lois de la Guerre, les Sanctions Nécessaires*, in 23 *Revue Générale de Droit International Public* (1916); an article by Professor Merignhac of Toulouse entitled *Sanctions des Infractions au Droit des Gens Commises au Cours de la Guerre Européenne*, (*ibid.*, 1917); an article by L. D. entitled *Des Sanctions à établir pour la Répression des Crimes Commis par les Allemands en Violation du Droit des Gens et des Traités Internationaux* (44 *Clunet*, 1917); an article by the late Professor Renault of Paris entitled *De l'Application du Droit Pénal aux Faits de Guerre*, in the *Rev. Gén. de Droit Int.* (Jan.-Aug., 1918), and an article by Professor Nast of Nancy entitled *Les Sanctions Pénales de l'Enlèvement par les Allemands du Matériel Industriel en Territoires Français et Belges Occupés par leurs Troupes* (*ibid.*, Jan.-Feb., 1919).

English and American writers also are not lacking who are advocating recourse to this expedient. See a paper by H. Bellot entitled "War Crimes, Their Prevention and Punishment," read before the Grotius Society of London and published in the second volume of its proceedings; an article by Professor T. S. Woolsey, entitled "Reconstruction and International Law," in the *American Journal of International Law* for April, 1919; and an article by C. H. Bartlett entitled "Liability for Official War Crimes," in 35 *Law Quarterly Review*.

These writers are all in agreement that it is within the legal right of a belligerent to try in his own courts individuals belonging to the armed forces of his adversary, as well as civil functionaries, for offenses committed against his nationals when the acts are at the same time crimes according to the criminal or military codes, such as pillage, incendiarism, rape, robbery, theft, violence and the like. The fact that such offenses are committed by soldiers during war make them none the less criminal acts. In fact, the military penal codes of most states provide for the punishment of such acts, and cases are not lacking in which particular German offenders who fell into the hands of the French authorities during the late war were tried and punished.

Many questions concerning the application of this principle, however, have been raised. For example, shall such offenses be tried by the regular criminal courts or by the military tribunals? If the offense is committed in a part of the national territory which is at the time under the military occupation of the enemy or if it is committed in foreign territory (for example against a prisoner), may the courts of the belligerent state of which the injured national is a citizen take jurisdiction? In countries holding to the territorial theory of jurisdiction the latter question raises serious difficulties. Another question is whether the offender may be tried in his absence in case he has not been apprehended. Most of the French jurists who have written on the subject answer the last question in the affirmative, but it is doubtful whether an English or American court would take jurisdiction in such a case. And in any case it is difficult to see what would be gained so long as the convicted offender remained outside the jurisdiction of the state in which he was tried.

A more perplexing question still is whether the plea of superior command should be admitted as a defense to the prosecution of a soldier charged with a crime committed by order of his commander. Some cases of this kind actually came before the military tribunals of France during the late war. To hold the individual soldier responsible would, it is argued by some, be destructive of military discipline; at the same time it would seem unjust to try and execute a young soldier who has been forced to commit a crime and for the refusal to do which he would be shot by his own commander. On the other hand, it is an axiom of English and American law that the plea of superior command is no defense for the commission of an illegal act. The French jurists generally hold that both the individual offender and the officer who gives the command should be held responsible, and in practice the



French military tribunals acted on this principle in the cases that came before them during the late war. The British manual of military law (arts. 336, 443), however, expressly declares that "members of the armed forces who commit violations of the recognized rules of warfare as are ordered by their commander cannot be punished by the enemy," although it adds that the officers or commanders responsible for such orders may, if they fall into the hands of the enemy, be punished. This rule is also found in the United States *Rules of Land Warfare* (art. 366). It is, however, hardly in accord with British authority<sup>1</sup> and it is strongly criticized by Bellot in his paper referred to above. It was also attacked by Sir Frederick Smith, then attorney-general and now Lord Chancellor of England. Oppenheim, however, approves the rule of the British and American manuals.<sup>2</sup>

The liability of the chief of state to trial and punishment for starting an unjust war and for the acts of his military and naval commanders in violation of the laws of war has been the subject of various articles.<sup>3</sup> These authors all affirm the principle of the responsibility of the former Emperor and his liability to trial, although several of them accompany it with reservations.

Professor Nast in the article referred to above argues at length that the Germans who carried away the machinery and equipment of factories from the occupied regions of France and Belgium for use in their own industrial establishments may be tried by the Belgian and French courts for theft. When the allied forces occupied the Rhenish provinces after the signing of the armistice, they found a considerable amount of this machinery in the possession of certain German manufacturers to whom it had been sold, and some of them were arrested and detained by the French military authorities. The German government protested on the ground that the carrying away of the machinery was not in violation of the laws of war, but was within the

<sup>1</sup> See Hall, *International Law*, 6th ed., p. 410; Holland, *Law of War on Land*, secs. 117-118; Phillipson, *International Law and the Great War*, p. 260.

<sup>2</sup> *International Law*, II, sec. 253.

<sup>3</sup> See among others Wright, "The Legal Liability of the Kaiser," this REVIEW, Feb., 1919, pp. 120ff; Erickson, *Law Notes*, Jan., 1919, 184ff; Clarke, "The Status of William Hohenzollern, Kaiser of Germany, Under International Law," 53 *American Law Review*, 401ff; Bartlett, "Liability for Official War Crimes," 35 *Law Quarterly Review*, 177ff; and the report of Professors Larnaude and de Lapradelle entitled *De la Responsabilité pénale de l'Empereur Guillaume II d'Allemagne*, distributed to the delegates of the Peace Conference and published in 46 Clunet, pp. 131ff, (1919).

legal right of a military occupant. Article 23g of the Hague Convention respecting the laws and customs of war on land allows an occupant to seize private property only when it is "imperatively demanded by the necessities of war." Article 46 forbids destruction or seizure of enemy private property, and article 47 forbids pillage. The German government maintained that in consequence of the Anglo-French blockade the vital interests of Germany, if not military necessity, required the seizure of the property in question and its use in the industries of the home country.

M. Nast points out, however, that according to the language and spirit of the Hague Convention, private property can be appropriated by the enemy only when its seizure is necessary to the conduct of his military operations or the enforcement of his measures of occupation, and does not justify the wholesale spoliation of factories in occupied territory, and the transportation of their machinery and equipment to his own country for use in private home industries for general purposes. Such an act was, he argues, sheer theft and not seizure based on imperative military necessity, such as is contemplated by the Convention. Consequently those responsible for it, as well as those who participated in the removal and transportation of the machinery to Germany were justiciable by the French or Belgium criminal courts, and the offenders might even be tried in their absence. Those who purchased the machinery in German territory from those by whom it was transported from France or Belgium, however, could not be tried by the Belgium or French courts for receiving stolen property because, according to the Belgian and French criminal codes, offenses committed by foreigners in foreign territory are not punishable in either Belgium or France unless the offense is one which is directed against the safety of the state.

Regarding the merits of the general principle that an officer or a soldier who commits an act in violation of the laws of war, when the act is at the same time an offense against the criminal law, should be held individually responsible and punished by the criminal or military courts of the injured belligerent whenever he falls into the hands of the authorities, we can only express approval; and the Peace Conference in requiring Germany to deliver up for trial and punishment designated offenders set a new standard which it is to be hoped will be followed in future wars. Unfortunately, however, this expedient cannot be enforced against offenders belonging to the armed forces of the victorious belligerent, and in the case of those surrendered by the defeated



belligerent there is the danger that justice may not always be meted out under such circumstances. It has been proposed therefore by some authorities that such offenders should be tried by international tribunals or by courts composed of judges representing neutral countries. But whatever the form or the procedure the desirability of bringing such offenders to the bar and of punishing the guilty is incontestable. If it were always practicable and were followed more generally, there would be fewer atrocities and violations of the law in the wars of the future.

*Reconstruction of International Law.* It was to be expected also that the termination of the war would be followed by much discussion of the problem of the reconstruction of international law and the reorganization of international relations. Dr. J. de Louter, professor of international law in the University of Utrecht, in an article entitled *La Crise du Droit International*, published in the *Revue Générale de Droit International Public* for January-February, 1919, points out that the existing body of international law, although by no means destroyed as some have contended, and the old organization of international relations, have been shown to be adequate neither to prevent war nor to curb its violence when it has once been unchained. International law, he says, is now passing through a period of evolution analogous to a pathological crisis, and its foundations and content must be reformed. The view must be adopted that war is not a product of law, but an attack upon law; and while the right of war as such cannot be abolished, the procedure of conducting it may be more effectively regulated; and he raises the question whether the benefit of the rules should not be limited to powers which are defenders of the law and refused to those who are aggressors, on the theory that the latter are violators of the law and should not be permitted to invoke its provisions. In this connection, he suggests that the customary division of international law into the law of peace and the law of war is superannuated and ill-founded. Peace and not war is now the normal condition of society, and a division of the law of nations analogous to the divisions of municipal law should take the place of the old division.

The conceptions of law and war are mutually exclusive; a law of war is an artificial and contradictory conception and the international law of the future should be based on the idea of the evolution and perfection of the law of peace rather than of war. The new international law must, he thinks, continue to recognize the sovereignty of states. The view advocated by some authorities that the existing sovereignty

of states must be replaced by an authority above them; that legislative, executive and judicial organs together with an international police force should be set over states, Dr. de Louter emphatically rejects. National sovereignty, he argues, is not an obstacle but an indispensable instrument in the progress of international law. The establishment of a super-state and the absorption by it of the existing states would mean the destruction of international law. The difficulty, he thinks, is not in the sovereignty of states, but rather in the false conception of what constitutes sovereignty and in the abuse of it. Sovereignty is the supreme power of the state over all persons and things within its jurisdiction; it is not the power of a state to determine its own standards of international conduct and to pursue policies that are subversive of its rights and interests of other states. It is therefore no surrender of sovereignty for a state to agree to arbitrate its controversies with other states, or submit them to a board of conciliation or to an international court.

Regarding the content and scope of the new international law Dr. de Louter very properly remarks that it must not be limited to general rules of conduct, but must embrace the larger domain of international commerce, communication, finance, instruments of exchange, public health and the like. This will involve no innovation in principle since, as an examination of recent treaties will show, these matters are already dealt with to a large extent in individual conventions.

Among the bases on which the international law of the future should be founded are justice, that is to say, the maintenance of a juridical order among independent states; respect for the principle of nationality; nonrecognition of the right of conquest or cession without the express consent of the inhabitants of the territory affected; liberty of commerce (trade must be internationalized and protective tariffs and other trade restrictions ought to be abolished); freedom of the seas (which was destroyed during the late war by unlawful blockades, institution of war zones, the extension of the doctrine of contraband and the like); and the abolition of secret treaties.

Finally, some form of sanction for international law must be found and guaranties more solid and effective must be provided; though he does not tell us what they shall be or how they may be enforced.

The necessity of a new and reformed body of international law is dwelt upon by Professor T. S. Woolsey in an article entitled "Reconstruction and International Law" in the *American Journal of International Law* for April, 1919. This need, he points out, will be impera-

tive in case an international court should be created as a part of the general scheme of international reorganization. The new law should, so far as possible, be embodied in a code which may be expected to grow and develop through application and interpretation by the international tribunal.

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## NEWS AND NOTES

### PERSONAL AND MISCELLANEOUS

EDITED BY FREDERIC A. OGG

*University of Wisconsin*

Jesse Macy, for many years professor of political science at Grinnell College, Iowa, and president of the American Political Science Association in 1916, died early in November, 1919. A pioneer in the United States in the systematic study and teaching of politics in a small institution in a new agricultural community, he gained a national and international reputation in his field.

Born in 1842, in Henry County, Indiana, of a Quaker, abolitionist family, he took an active part in the hospital service of the Union army during the Civil War, and in 1870 was graduated from Iowa (now Grinnell) College. A year later he was appointed principal of the academy at this institution; in 1883 he became acting professor of history and political science in the college; and two years later he was appointed professor of political science (probably the first in this subject), a position which he held until retired as professor *emeritus* in 1912.

Aside from several small books, dealing mainly with local institutions in Iowa, his works are: *The English Constitution* (1897), *Political Parties in the United States, 1841-61* (1900), *Party Organization and Machinery* (1904), and (with J. W. Gannaway) *Comparative Free Government* (1915). Among his shorter articles may be noted his presidential address before the American Political Science Association, on "The Scientific Spirit in Politics," published in this *Review* for February, 1917.

He made frequent visits to England and the continent of Europe, where he formed personal relations with leading students and men in public life. In 1913, he lectured at a number of French provincial universities on the Harvard Foundation.

Dr. David P. Barrows, professor of political science at the University of California, was on December 2 elected to the presidency of that institution and took office immediately. President Barrows studied at the universities of California, Columbia, and Chicago, receiving his doctor's degree in anthropology at the last-named institution. He went to the Philippines with the Taft Commission, and was successively director of city schools in Manila, chief of the bureau of non-Christian tribes, and director of the bureau of education of the islands. He returned to the University of California in 1910, and has since been professor of education, professor of political science, and dean of the faculties. During the war he served as major and lieutenant colonel with the expeditionary forces in Siberia.

Dr. L. S. Rowe, of the University of Pennsylvania, who has been for the past two years assistant secretary of the treasury, has been appointed chief of the division of Latin-American affairs in the department of state and has been granted leave of absence for an additional year.

Dr. Cyrus F. Wicker has been appointed assistant professor of political science at Pennsylvania and is giving Dr. Rowe's courses during the current year. Dr. Wicker was graduated at Yale and received the degree of D.C.L. at Oxford, where he studied as a Rhodes scholar. In recent years he has been engaged in diplomatic service in Central and South America.

Professor Edgar Dawson, of Hunter College, New York City, has been given leave of absence for the year 1920 to study the teaching of government in secondary schools. He will welcome correspondence with those who are interested in the subject, suggestions as to points which should be covered, or information as to successful experiments now being made in the field. He hopes to publish the results of the year's work in the spring of 1921.

Mr. Herbert Adams Gibbons, whose *New Map of Asia* was published recently by the Century Company, has been chosen by Princeton University to resume the Spencer Trask lectures which were interrupted by the war. He began his work there on November 12, speaking on "What Confronts France."

Dr. Earl W. Crecraft, formerly lecturer in government at New York University and secretary of the Citizens' Federation of Hudson County, N. J., has been appointed professor of political science at the Municipal University of Akron, Ohio.

Professor R. G. Campbell, of Washington and Lee University, has returned to his academic work after spending several months in France with the army educational corps and a few months in London as agent of the United States shipping board.

Thomas H. Reed, professor of municipal government, succeeds President Barrows as chairman of the department of political science at the University of California. The department will be increased by the temporary addition of Professor Edgar Dawson, of Hunter College, New York. Professor Dawson will devote himself to instruction in the teaching of civics and government. Other additions are contemplated.

Two bureaus for research in foreign relations and administration have been organized in the political science department of the University of California. Dr. J. R. Douglas, instructor in political science, is secretary of the bureau of public administration, and Dr. C. E. Martin, lecturer in international law and political science, is secretary of the bureau of international relations.

A series of public lectures was given by members of the department of political science of the University of California during the past semester. The titles and speakers were as follows: "Soviet Government in Eastern Europe," Professor D. P. Barrows; "The League of Nations and the Peace of the World," Professor T. H. Reed; "The Peace Conference and Its Problems," Dr. L. Ehrlich; "Theodore Roosevelt and American Foreign Policy," Dr. C. E. Martin; "The Government and the Railroad Problem," Dr. J. R. Douglas; "The Politics of the Industrial Crisis," Professor T. H. Reed.

Professor H. G. James, of the University of Texas, has been promoted to a full professorship in the department of political science.

Professor Raymond G. Gettell, of Amherst College, will give courses in political science at Cornell University next summer.



A memorial fellowship fund has been provided at Amherst College, for the study of social, economic, and political institutions. Appointments will be open to graduates of any college or university, and will be based on evidence of marked mental ability, promise of original work, qualities of leadership, and a spirit of service. A fellow will be appointed every second year for a period of not more than four years. It is desired that at least half of the period shall be spent in study in Europe, and the last year at Amherst College, where a course of lectures may be given. The fund will provide \$2000 a year for each fellow. The committee in charge will include three from Amherst College, one associated with some other college or university, and one business or professional man.

A notable change in college organization has resulted from action taken last June by the trustees of the College of the City of New York. As now organized, it consists of three distinct but closely articulated schools: the college of arts and science, the school of technology, and the school of business and civic administration. The change was largely an outgrowth of the expansion of the college along lines of business and civic instruction under the direction of Professor Frederick B. Robinson. The former department of political science has been divided. The courses in economics and business have been made the basis of the school of business and civic administration, of which Professor Robinson is dean. Another portion of the old department is reconstituted as the department of government and sociology under the direction of Professor W. B. Guthrie.

Dr. George H. Derry, assistant professor of political science at the University of Kansas during the year 1918-19, is lecturing in the department of economics and politics at Bryn Mawr College, during the absence of Professor Marion P. Smith, who is spending her sabbatical year in the Far East.

Mr. John Barrett has announced his intention to retire from the office of director-general of the Pan American Union at the close of the present fiscal year. It is stated that he will, after a time, become president of a new unofficial Pan American organization which is planned to be "the most practical and comprehensive combination for the development of international commerce and goodwill that has ever been formed."

The New York State Reconstruction Commission has published a comprehensive report on *Retrenchment and Reorganization in the State Government* which advocates extensive changes in the state governmental machinery, including, among other things, the consolidation of numerous departments, centralization of executive responsibility, extension of the governor's term to four years, and a consolidated budget system with accounting control over spending officers.

The members of the Pennsylvania commission on constitutional amendment and revision were announced by Governor Sproul in November. The commission consists of twenty-five members appointed by the governor, under the chairmanship of the attorney-general of the state, William I. Shaefter. The selections show a desire to make the body representative of widely varying tendencies of thought and interest. The commission includes U. S. Attorney-General Palmer; Hampton L. Carson; U. S. Secretary of Labor Wilson; ex-President Sharpless of Haverford College; T. DeWitt Cuyler, railway attorney; former judges Sulzberger and Gordon; Gifford Pinchot; Provost Smith, of the University of Pennsylvania; and F. N. Thorpe, professor of political science and constitutional law at the University of Pittsburgh. There are two women members. The commission was created to prepare a draft of a revised constitution for submission to a convention which is to be provided for at the session of the legislature in 1921.

The thirty-ninth annual meeting of the Academy of Political Science in the City of New York was held at the Hotel Astor November 21-22. The general subject under consideration was railroad legislation, and sessions were devoted to each of the following topics: the railroads and the shipper, the railroads and the investor, the railroads and labor, and the railroads and the public. Among persons who read papers or otherwise participated in the program were B. H. Meyer, interstate commerce commissioner; John E. Oldham, banker of Boston; Thomas W. Hulme, chairman of the President's committee on federal valuation; Frederick C. Howe, former commissioner of immigration at the port of New York; Daniel Willard, president of the Baltimore and Ohio Railroad; Emory R. Johnson, of the Wharton School of Finance and Commerce, University of Pennsylvania; and Albert M. Todd, president of the Public Ownership League of America. The speakers at the annual dinner were Hon. Schuyler Merritt, member of the house committee on interstate and foreign commerce; Howard Elliott,

president of the Northern Pacific Railroad; Alfred P. Thom, general counsel of the Association of Railway Executives; and Timothy Shea, acting president of the Brotherhood of Railway Firemen and Engineers. The complete proceedings have been published by the Academy.

By the addition of two members to the teaching staff of the school of government, instruction in political science at the University of Texas has been amplified along two lines. One of these is Latin-American government and diplomacy, in which courses are offered by Professor C. H. Cunningham, who has specialized in the field of Latin-American affairs, has traveled extensively in South and Central American countries, and was last year in Mexico as vice-consul. The other subject is American diplomacy and world politics, in charge of Mr. C. P. Patterson, who is giving special attention to the relations of the United States to Europe, to the problems growing out of the League of Nations, to the political aspects of reconstruction, and to the relations of the United States to China, Japan, and other Far Eastern states.

To improve instruction in the school of government, and to develop facilities for advanced instruction in research, a bureau of government research has been established, to continue the work begun by the bureau of municipal research and reference, and in addition, to undertake research work along other lines. Digests and bulletins are in preparation on important subjects in state, county, and municipal government. The primary purpose of the bureau will be to serve as a laboratory and reference bureau for the students in the school; but its facilities will also be available, so far as possible, to public officials, to interested citizens, and to anyone who may call upon the university for governmental information. Mr. Frank M. Stewart is in charge of the bureau staff, and is the secretary-treasurer of the League of Texas Municipalities. The library and seminar room conducted in connection with the bureau is in charge of Mrs. Sarah S. Edwards, who has had experience in reference library work in the Brooklyn public library and the Indiana legislative reference library.

The International Labor Conference held in November in the Hall of the Americas of the Pan American Building, Washington, was the first important assembly of its kind brought together under the terms of the Peace Treaty. Its significance, however, was not generally appreciated in Washington or throughout the United States. On account of unfortunate newspaper notices and certain speeches made

in Congress, the idea went abroad that this conference was composed of radical labor leaders who desired to upset present conditions and bring about industrial revolution. The contrary was the truth. Attending the conference were almost 300 delegates and advisers, from 30 different countries. One-third of these were delegates of the governments, and were almost exclusively leading statesmen or men prominent in public affairs. Another third consisted of employers of labor and representatives of capital, including many of the greatest employers of Europe and Japan. The remaining third was made up of representatives of labor organizations in the participating countries, and with hardly an exception these were men of ability and sincerity who wished to do their part in bringing labor and capital closer together. Although the United States, not having ratified the Peace Treaty, was unable to participate officially, the conference elected Secretary of Labor W. B. Wilson as its chairman. All discussions and resolutions were interpreted from English into French or from French into English, as was required; and the proceedings were reported not only in English and in French, but in Spanish, for the benefit of the large number of delegates from Spanish-speaking countries. The conference made specific recommendations on many points affecting labor, and appointed a governing board to carry on its work until the next meeting should be held, in 1920.

The Civil Service Reform League has issued an important preliminary report, prepared by a committee of which Dr. Ellery C. Stowell was chairman, on the subject of needed reforms in the American diplomatic and consular service. The principal recommendations are: (1) placing the services strictly on a merit basis; (2) purchase of embassies, legations, and consulates; (3) an increase of the salary scale in all branches; (4) abolition of the rule, known as the state quota, according to which appointments in the foreign service are distributed among the states in proportion to the number of inhabitants; (5) more general selection, by the President and other appointing officers, of the representatives at international conferences from the foreign service and from the experts in the employ of the government; and (6) completion of the Americanization of the consular service by the appointment of salaried vice-consuls, after examination, to act in the place of foreigners now serving.

Specific recommendations with a view to guaranteeing the merit basis are: (a) that the age limit for entering the service be reduced so

as not to exceed 30 years; (b) that the examinations be held at a fixed date (preferably at the end of the academic year), with such supplementary examinations as may be necessary; (c) that examinations for both branches of the service be open to any citizen of the United States without designation by the President or recommendation by senators or representatives; (d) that the written examinations be held by the civil service commission in the principal cities where civil service examinations are held; (e) that the written examination set each year be published with the ratings of the successful candidates; (f) that candidates who pass the written examination with a certain approved rating be certified by a local examiner to receive transportation to Washington for the purpose of taking the oral examination; (g) that candidates who pass the oral examination be given a period of trial and instruction at the department of state before nomination for appointment.

To eliminate political considerations it is advocated in particular: (a) that the President be urged to fill the post of minister by the promotion of capable officers in the foreign service, and that when a vacancy occurs the secretary of state be required to submit to the President for his consideration the names of secretaries and consuls who merit promotion; (b) that ministers be appointed to a grade and not to a specific post; (c) that the President be urged, in as far as practicable, to promote ministers to embassies when vacant; (d) that examinations be held every year for those who wish to be transferred from the consular to the diplomatic service, or vice versa, and that from the candidates successful in passing the tests a certain number be transferred; (e) that the promotion of consuls be from grade to grade, with a reasonable period (at least one year) of service in each grade; (f) that the existing rule permitting the appointment to the foreign service without examination of certain employees of the department of state be restricted to employees who have entered the department after examination or have served therein not less than five years.

**Annual Meeting.** The fifteenth annual meeting of the American Political Science Association was held at Cleveland, December 29-31, 1919. Over a hundred members registered, and the number of persons in attendance was probably about one hundred and forty. Several other organizations were in session at Cleveland at the same time, including the American Historical Association, the National Municipal League, and the American Association of University Professors. Joint sessions were held with the first two of these associations.

The opening session of the Political Science Association was devoted to the general subject of state constitutions. Professor John A. Fairlie, of the University of Illinois, presided, and papers or talks of a practical character, dealing with conventions in certain states, were given by Dean George W. Knight of Ohio State University, Dr. Charles A. Beard, director of the New York Bureau of Municipal Research, Professor Albert Bushnell Hart of Harvard University, and A. E. Sheldon of the Nebraska Legislative Reference Bureau. In the absence of Dr. W. F. Dodd, of the Illinois Legislative Reference Bureau, Professor Fairlie discussed the Illinois constitutional convention, which has since come into session.

At a joint meeting with the American Historical Association presidential addresses were delivered by Mr. William R. Thayer on "Recent Fallacies in History" and Professor Henry Jones Ford on "Present Tendencies in American Politics."

At a second joint session with the Historical Association, December 30, the general subject was political conditions in Russia and the Far East. Jerome Landfield, of the Russian Economic League, vividly described the November revolution, and Baron S. A. Korff discussed the future Russian constitution as viewed by Russian liberals. Professor W. W. Willoughby of Johns Hopkins University, gave a clear analysis of the political situation in the Orient.

The afternoon session of December 30 was held jointly with the National Municipal League and was devoted to the subject of budgetary reform. James W. Good, chairman of the committee on appropriations of the national house of representatives, who was to have delivered the principal address, was detained in Washington by committee hearings. His place on the program was taken by Dr. W. F. Willoughby, director of the Institute for Government Research at Washington. Dr. Willoughby, in addition to being an authority on budgetary matters, was in a position to speak expressly for Mr. Good and the appropriation committee.

On the evening of the 30th Frederick P. Keppel, ex-assistant secretary of war, spoke on "The General Staff of the War Department." The following forenoon a session was held on the general subject of foreign political conditions. A paper on "The New German Constitution" was read by Professor W. J. Shepard of the University of Missouri. Another, entitled "The New Balkans of Central Europe, with Special Reference to Hungary," by Professor Philip M. Brown of Princeton University, was read by Dr. S. K. Hornbeck. And Professor Ludwik Ehrlich of the University of California spoke on "Old and New Poland."

The closing session was devoted to the subject of national administration and papers were read as follows: "Democracy and Efficient Government," by Professor C. G. Fenwick of Bryn Mawr College, and "The Problem of Administrative Legislation," by Professor John A. Fairlie of the University of Illinois.

At the business session of the association, held on the evening of the 30th, the acting secretary-treasurer submitted a report on the membership and finances of the association showing the following facts:

Present membership, 1321; applications for membership on hand, 3; life memberships fully paid, 53; members owing dues for 1919, 88; members owing for 1918 and 1919, 43; members owing for 1917, 1918 and 1919, 17; balance in general account December 15, 1918, \$512.98; trust fund, December 15, 1918, \$559.37; receipts from December 15, 1918, to December 15, 1919, \$5467.08; disbursements between same dates, \$4756.37; trust fund, December 15, 1919, \$724.98; special account (to be added to trust fund in 1920), December 15, 1919, \$170; balance in general account December 15, 1919, \$1054.59.

On behalf of the executive council, announcement was made (1) that the committee on the preparation of a critical bibliography of political science has been discharged, at its own request; (2) that Professor Edgar Dawson, of Hunter College, has been designated to represent the association on the national committee on the teaching of citizenship; (3) that the committee on instruction in political science, authorized three years ago but not appointed on account of war time conditions, will be appointed by the incoming president; and (4) that a committee on membership has been created, consisting of Professors H. M. Bowman of Boston University, H. G. James of the University of Texas, J. D. Barnett of the University of Oregon, B. F. Shambaugh of the University of Iowa, R. S. Saby of Cornell University, Lindsay Rogers of the University of Virginia, O. D. Skelton of Queens University, Kingston, Canada, and C. A. Dykstra of Cleveland, with the secretary-treasurer of the association as *ex officio* chairman.

A proposal that the association ratify the constitution of an American Council of Learned Societies devoted to Humanistic Studies, an organization in process of formation during the past six months, was referred to the executive council for action after more information on the subject should have become available.

The place of meeting in 1920 was left to the decision of the executive council.

The managing editor of the REVIEW announced that no changes would be made in the board of editors for 1920.

Officers of the association for 1920 were elected as follows: President, Paul S. Reinsch, Washington, D. C.; first vice-president, David P. Barrows, University of California; second vice-president, Edward S. Corwin, Princeton University; third vice-president, R. S. Childs, New York City; secretary-treasurer, Frederic A. Ogg, University of Wisconsin. The omission of the meeting of the association in 1918 interfered with the scheme of rotation in the executive council; hence five councillors were elected for the term ending in December, 1921, and five others for the term ending in December, 1922. The first group consists of J. P. Chamberlain of Columbia University, E. A. Cottrell of Leland Stanford University, R. E. Cushman of the University of Minnesota, S. K. Hornbeck of Washington, D. C., and F. B. Sayre of Harvard University. The second group consists of Edwin Borchard of Yale University, R. T. Crane of the University of Michigan, H. W. Dodds of Western Reserve University, C. E. Merriam of the University of Chicago, and S. P. Orth of Cornell University.

The undersigned auditing committee has examined the accounts of the secretary-treasurer of the American Political Science Association and has found them correct, as reported by him at the Cleveland meeting.

December 31, 1919.

EDGAR DAWSON,  
CARL F. GEISER.



## DOCTORAL DISSERTATIONS IN POLITICAL SCIENCE

### IN PREPARATION AT AMERICAN UNIVERSITIES<sup>1</sup>

#### AMERICAN GOVERNMENT AND PUBLIC LAW

- Austin, Gertrude B.*, Leadership in the Woman Suffrage Movement in New York City. Columbia University.
- Berdahl, Clarence A.*, The War Powers of the Executive. University of Illinois.
- Beyle, Herman C.*, History of Labor Legislation in Ohio. University of Chicago.
- Branham, Lucy Gwynne*, The History of Labor and Politics in New York. Columbia University.
- Carroll, Thomas F.*, The Espionage Act and Freedom of Speech and Press in War Time. Princeton University.
- Cottrell, E. A.*, Municipal Budget Systems. Harvard University.
- Diamond, Victoriano*, The Government of the Philippines, 1898-1919. University of Iowa.
- Dunbar, Louise B.*, A Study of "Monarchical" Tendencies in the United States, 1776-1801. University of Illinois.
- Frye, L. A.*, History of State Control of Public Service Corporations in New York. Columbia University.
- Gulick, Luther H.*, The Evolution of the Budget in Massachusetts. Columbia University.
- Hanford, A. C.*, The Reconstruction of State and Municipal Government by Constitutional Amendment. Harvard University.
- Hart, S. J.*, The Ordinance-making Powers of the President of the United States. Johns Hopkins University.
- Holmes, Lucia M.*, Development of Municipal Government in the United States before the Civil War. Northwestern University.
- Hormell, O. C.*, Municipal Finances as a Function of Government. Harvard University.
- Jensen, Christen*, The Pardoning Power in the American States. University of Chicago.
- Jones, O. G.*, Making a Filipino State. University of California.
- Lambie, Morris B.*, The Standardization of Governmental Salaries. Harvard University.
- Leigh, Robert D.*, Federal Public Health Administration. Columbia University.
- Loomis, Milton E.*, Legal Status of the University and its Relation to the State. University of Chicago.
- McCaffery, G. H.*, Municipal Policies. Harvard University.

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<sup>1</sup> For previous lists, see *American Political Science Review*, IV, 420 (1910); V, 456 (1911); VI, 464 (1912); VII, 689 (1913); VIII, 488 (1914).

- Martz, C. E.*, The Growth of the Power of the Senate. Yale University.
- May, Samuel C.*, The Consolidation of City and County Governments. Columbia University.
- Morgan, C. S.*, A Statistical Analysis of the Increase in American Public Expenditures. Yale University.
- Norton, A. C.*, A Historical Study of the Separation of Powers in the United States. Harvard University.
- Patten, Stephen J.*, Non-partisan Municipal Elections. Columbia University.
- Rankin, R. C.*, Pennsylvania Politics, 1790-1838. Harvard University.
- Richards, O. R.*, The Movement for the Constitution of the United States. Columbia University.
- Ryden, G. H.*, River and Harbor Legislation in the United States. Yale University.
- Sargent, Noel*, The Delegation of Legislative Power. University of Minnesota.
- Senning, J. P.*, Legislation and Legislative Methods in Connecticut since 1818. Yale University.
- Stewart Frank M.*, Reorganization of the State Government of Texas. University of Texas.
- Wanlass W. L.*, The United States Department of Agriculture: a Study in Administration. Johns Hopkins University.
- West, Victor J.*, Corrupt Practices Legislation. University of Chicago.
- White, Leonard D.*, The Development of Public Regulation in Massachusetts. University of Chicago.

## FOREIGN AND COMPARATIVE GOVERNMENT

- Balcom, A. B.*, The Development of English Poor Law Policy. Harvard University.
- Bruce, Harold R.*, The Political Activities of Organized Labor in England and the United States; a Comparison. University of Wisconsin.
- Brush, Elizabeth P.*, Guizot in the Reign of Louis Philippe. University of Illinois.
- Clark, D. O.*, Cabinet Government in France. University of Illinois.
- Cochran, M. H.*, The Frankfort Parliament of 1848. Harvard University.
- Collins, Ross W.*, Church and State in France under the Third Republic. Columbia University.
- Flournoy, F. R.*, The Extent of Parliamentary Control of Foreign Policy in Great Britain. Columbia University.
- Howe, H. E.*, Historical Antecedents of the Unicameral System in New Brunswick. Yale University.
- Hyde, D. C.*, Canadian War Finance. Harvard University.
- Moon, P. T.*, Development of the Political and Social Program of the Action Liberale in Modern France. Columbia University.
- Ram, V. S.*, The Government of Dependencies. Harvard University.
- Swanson, F. C.*, Education and the Democratic Movement in England. Yale University.
- Taft, Helen H.*, The Colonization and Early History of Australia. Yale University.

- Trotter, R. G.*, The Establishment of Federal Government in Canada. Harvard University.
- Wilson, G. E.*, The Life of Robert Baldwin: a Study in Canadian Politics. Harvard University.
- Wittke, Carl*, History of Parliamentary Privilege in England. Harvard University.
- Yokoyama, T.*, Historical Development of the Japanese Judiciary, 660 B.C. to 1867 A.D. Johns Hopkins University.

## INTERNATIONAL AFFAIRS

- Arragon, R. F.*, The Panama Congress. Harvard University.
- Bancroft, E. C.*, Trade Relations of Canada with the United States. Yale University.
- Billing, T. C.*, Negotiations of the United States for the Purchase of the Danish West Indies. University of Pennsylvania.
- Carpenter, Park*, The Question of Administration of Santo Domingo by the United States, 1848-1871. Harvard University.
- Downing, Thomas G.*, Commercial Relations of the United States with China. University of Pennsylvania.
- Flack, Joseph*, Recent Commercial Relations between the United States and Great Britain. University of Pennsylvania.
- Fuller, J. V.*, The Foreign Policy of Bismarck's Later Years. Harvard University.
- Hurwits, Henry*, Change of Sovereignty in International Law. Harvard University.
- Jaffe, William*, The Question of Armaments. Columbia University.
- Lockey, J. B.*, Latin America and the Monroe Doctrine. Columbia University.
- Martin, C. E.*, Policy of the United States Regarding Intervention. Columbia University.
- Mori, Kenichi*, Japanese Diplomacy in Three Wars. Columbia University.
- Noble, George B.*, The Egyptian Question. Columbia University.
- Odatey, George*, Methods of Improving Banking and Financial Relations between the United States and Japan. Columbia University.
- Reed, E. L.*, Relations between the United States and Portugal. University of Pennsylvania.
- Steefel, L. D.*, The Schleswig-Holstein Question, 1863-64. Harvard University.
- Stuart, Graham H.*, French Foreign Policy, 1898-1914. University of Wisconsin.
- Townsend, Mary E.*, The Origins of Modern German Colonialism. Columbia University.
- Williams, Bruce*, The Sub-Legal International Rights and Obligations of States. University of Chicago.
- Wood, G. Zay*, The Open Door Policy in China. Columbia University.
- Wood, Orville W.*, The War and Neutral Rights. Columbia University.
- Wriston, H. M.*, Special Agents in American Diplomacy. Harvard University.
- Zimmerman, J. P.*, Public Opinion and Foreign Policy. Columbia University.

## JURISPRUDENCE

*Carter, J. T.*, The Nature of the Corporation as a Legal Entity with Special Reference to the Law of Maryland. Johns Hopkins University.

*Hunting, W. B.*, The Obligation of Contracts Clause of the United States Constitution. Johns Hopkins University.

*Mah, W. N.*, The Theory and Practice of Martial Law. University of California.

*Merza, Y. B.*, Persian Jurisprudence. Johns Hopkins University.

## POLITICAL THEORY

*Clark, Archibald B.*, The Popular Vote as an Index of Social Solidarity. Columbia University.

*George, W. H.*, Theories of the State and Sovereignty in France since 1848, with Special Reference to the Political Problems Created by the Rise of Modern Trade Unionism. Harvard University.

*Jones, Frederick*, Measure of Forms of Political Parties. Columbia University.

*Mattern, J.*, The Employment of Plebiscites in the Transfer of Sovereignty. Johns Hopkins University.

## BOOK REVIEWS

EDITED BY W. B. MUNRO

*Harvard University*

*The Rise of Nationality in the Balkans.* By R. W. SETON-WATSON. (New York: E. P. Dutton and Company. 1918.)

*Our Allies and Enemies in the Near East.* By JEAN VICTOR BATES. With an introduction by the Rt. Hon. Edward Carson, K. C. M. P. (New York: E. P. Dutton and Company. 1918.)

The first volume deserves serious consideration as would, of course, any book of Dr. Seton-Watson on the Balkan peoples. At once its table of contents gives us confidence to expect systematic treatment of the subject, and this is true, although there are some imperfections in that treatment.

Part I is distinctly historical, although some chapters, notably those upon Byzantium, upon Stamboul and upon the Balkan questions are somewhat sketchy. In about one hundred and forty pages the author introduces us to his subject and brings us to the beginning of the Balkan League, with which Part II commences. This part is in fact a study of the causes and events of the two Balkan wars of 1912-13. The book closes with the signing of the armistice at the end of the Balkan wars, without making the connection that would be so valuable between them and the world war, an omission due to the author's departure for military service.

Though, too, the book bears the date of 1918, the notes as well as the text reveal that it was written in 1914 with a few later embellishments. It therefore borders dangerously upon the line of the obsolete, reflecting past conditions as it does—a past chronologically but little removed from us but in point of atmosphere so radically different. The text is clear and readable but not without apparent contradictions. At one place (p. 199) it is stated that the Balkan allies "embarked upon war without any agreement with regard to

sharing the spoils," but later (p. 231) the author refers to "the division of spoils in accordance with a clearly defined plan" which is apparently "based upon a definite treaty of partition." Such ambiguities are, however, not numerous. A bibliography that appears distinctly helpful and an index of the conventional type serve as accessories. Of the maps, the one dealing with the races of the Balkan peninsula is likely to be the most helpful and the most open to controversy. Others are: *The Balkans by Treaty, 1800-1878*; *The Balkans by Treaty, 1878-1913*; *The Balkan Campaigns, 1912-1913*. They are not mentioned in the table of contents; but are all clear, usable and accurate, apparently, so far as such maps can be at present.

We should hardly place the book in the five dollar class especially in its American, "inexpensive" appearing edition. Many may pass it by on account of the main criticism offered in this review, its "out-of-dateness," even at the time of its publication. But there may be compensation for this weakness in the insight given the reader as to the opinions and conclusions of the author in a field where controversy rages and where calm judgment such as his is none too common.

The title of the second book is misleading. There is nothing about Serbs, Montenegrins or Greeks, Turks or Albanians. Over a third of the volume is devoted to the Rumanian lands; but nearly a half to Bulgaria. The remaining pages tell us of the Jews of Croatia. In fact very much of the book is about Jews and Gypsies, and also about the Saxons. Rose fields, the night side of Sofia and military life in the capital, also minute descriptions of dress are interspersed with bits of gossip and scandal. The Bulgars are characterized as "a cruel and brutal nation" (p. 137), as "the murderers of the Balkans" (pp. 112, 122), statements which rouse (like the procession of epithets, even abuse, against Ferdinand) challenging comparisons with other peoples and rulers. "But for some reason," says the author (p. 110), "nothing is really pleasing" in Bulgaria; an attitude of mind even worse than that of Kipling in his *American Notes*. Throughout the book the flood of adjectives is excessive, and while on the whole friendly to the Jews and Rumans, the author's gift in vividly picturing the disagreeable cannot be gainsaid. Yet the writer of the introduction could scarcely have been well acquainted with the contents of the volume, since he refers to it as "informing" and suggests that it will give "a better understanding of the Near East and its peoples." The picture the author presents to us is drawn with entirely too dark shading in most cases; the unusual and the abnormal are developed rather than the usual and the normal.

The faults in the make-up of the book are conspicuous. The type is poor, the index quite inadequate, maps are missing, the chapter titles misleading, and the illustrations one might expect in a work of this kind, designed as it should be for the popular taste rather than the scientific, entirely lacking.

ARTHUR IRVING ANDREWS.

*Tufts College.*

*German Social Democracy during the War.* By EDWYN BEVAN.  
(New York: E. P. Dutton and Company. 1919. Pp. x, 280.)

Notwithstanding the apparent unanimity with which the Social Democrats in the Reichstag voted war credits and in other ways supported the imperial government in the early days of August, 1914, a rift within their ranks—which indeed existed from the first—gradually became a chasm, and in January, 1917, the party fell definitely into two entirely separate and sharply antagonistic bodies. The “Majority” members continued to support the government, some on the ground that the time had come for the party to change its principles and accept responsibilities in the state, others on the ground that the party’s principles were right but did not preclude participation in measures for the defense of the country in a nonaggressive war. The Independents, on the other hand, went into open opposition, some denying that the war was, on the German side, one of self-defense, others maintaining that no socialist could consistently have any share in furthering the war policy of a capitalistic state, even if the war be a defensive one.

Mr. Bevan, writing early in 1918, undertakes to trace the history of Social Democratic participation in and protest against the war, from the beginning to the accession of Count Hertling to the chancellorship in the autumn of 1917. He fully recognizes the limitations under which he, as a foreigner writing in a hostile country, works; he says that the finally satisfactory account will have to be written by some one who was “inside the movement.” Diligent and discriminating use of German books, pamphlets, and newspapers, has, however, made visible at least the broad outlines of Social Democratic history in the war period; and Mr. Bevan has put together the results of his researches in a book which is not only interesting but, for the time being at all events, decidedly useful.

The theme of the volume is the continuous growth of the anti-war minority in numbers and influence, and the treatment is mainly chronological. The various defenses offered by the majority elements for their course are clearly analyzed; the arguments and motives of the Independents are judiciously appraised; and two principal conclusions are arrived at: (1) that the differences of view were fundamental and that the reproaches which the majority direct against the Independents for disrupting the party, and the reproaches which the Independents direct against the authorities of the old party for insisting upon conformity of action within the party, are equally unreasonable; and (2) that the minority grew, "not because the German masses cared for 'self-determination of nationalities' or 'no annexations,' or any other ideal principle, but because the bereavements and material discomforts of the war made them want peace above everything else, and the policy of the minority leaders seemed to promise them peace most speedily."

FREDERIC A. OGG.

*University of Wisconsin.*

*Alsace-Lorraine since 1870.* By BARRY CERF, University of Wisconsin. (New York: The Macmillan Company. 1919. Pp. 180.)

Not the least among the triumphs of the righteous cause which carried the Allies to victory was the restoration of Alsace-Lorraine to France. The captivity of this land which lies between the Rhine and the Moselle lasted almost fifty years. That the question of Alsace-Lorraine was one of the causes of the world war, or, as Mr. Barry Cerf states in the preface to his excellent volume, one of the most important obstacles to peace between France and Germany, every student of history will agree. The loss of the Reichsland, the Land of the Empire, is perhaps the severest blow Germany has received.

The incorporation of Alsace-Lorraine into France dates from 1552. At that time it was a "mosaic of principalities, bishoprics, free cities, republics, seignories, etc., which comprised the imperial possessions on the left bank of the Rhine." About that same date it was organized by French administration into two provinces. These had been for centuries the prey of every invader; they had been the battle ground of Europe. France promised protection, prosperity and happiness; and France kept her word until the deplorable tragedy of 1871. Alsace-



Lorraine was then wrested from the motherland by unjustifiable claims which were pressed with irresistible force; but her national heart and life were kept inviolate from the conquering invader. German law and enforced German speech could not effectually Teutonize the brave little country whose national emblem was the forget-me-not. Never did the provinces lose their essential unity with France or their passionate loyalty to her—a fact amply proved by Mr. Cerf from the enemy's own mouth. "We have to take the same precautions in Alsace as on the soil of the enemy," said a German officer in 1916. This, after nearly half a century of occupation! That Germany realized to the full her failure in this regard is evident from the deeply interesting fact that she had planned, in retaining Belgium, to avoid the initial mistake made in her former conquest; and to deport all inhabitants, replacing them with "honest Germans."

Mr. Cerf's book treats concisely and clearly of the economic, social and political condition of Alsace-Lorraine under German rule, and it should be in the hands of every lover of freedom, of justice and of France.

PETER GUILDAY.

*Catholic University of America.*

*Ireland and England: In the Past and at Present.* By EDWARD RAYMOND TURNER. (New York: The Century Company. 1919. Pp. xii, 504.)

If Irish history had all been written in the spirit in which Professor Turner approaches the subject, there would now be no Irish question. The misfortune of Ireland is that her people have been nourished on a history of wrongs. They have fed on the poison of hatred, until they are no longer capable of seeing or hearing anything except Ireland, her wrongs and her grievances. In the earlier chapters of his little book, Professor Turner sets out plainly the many reasons that Irish history affords for this sense of wrong. He tells the story of the repeated but ineffectual conquests by England, and of all the misery and shame wrought upon the conquered people. But he never keeps his eyes so close to the picture of Ireland that he cannot see the background and the setting. He shows that the wrongs were not peculiar to the Irish, and not wantonly and wickedly inflicted by the English. They were incident to the general history of the times. The English people and the Scotch and Welsh all suffered similar wrongs—similar

in kind if not so intense; and the treatment meted out to the Irish was the treatment that conquerors gave everywhere to the conquered in those earlier and less humane days.

The first third of the volume tells the story up to the consummation of the union. In these chapters, Professor Turner deals with Ireland's ancient culture, the conquests of the English, Grattan's parliament and the union. The rest of the history is devoted to the nineteenth and twentieth century. Professor Turner makes no attempt to add anything new to what is already known of Irish history. His effort is for a new presentation of a familiar subject rather than the discovery and presentation of new evidence. But great care has been exercised to make his story accurate as well as readable. In one or two minor matters he seems to show a certain lack of familiarity with the British parliamentary system. In telling of O'Connell's appeal to the house of lords, he writes as though all the peers formed the highest court of the British Empire, instead of this court being formed only of the small group of "law lords" who sit in the upper house. He fails to give credit to Poynings for his effort to protect the Irish against the oppression of the Anglo-Irish parliament when he secured the passage of Poynings's Act. Exception might be taken to other of his statements; but it can hardly be expected that in a history so controversial as that of Ireland any author could satisfy all his critics, and the chief value of the book lies not in meticulous exactness of the statements it contains, but in the new point of view, which takes in not only Ireland and her history of wrongs, but all Europe and America as background for the events in Ireland. The book will not be welcomed by the extremists on either side of the controversy, but it ought to prove of the greatest possible value to the many who are anxious to see right done both to England and Ireland.

A. G. PORRITT.

*Hartford, Conn.*

*Present Problems in Foreign Policy.* By DAVID JAYNE HILL.  
(New York: D. Appleton and Company. 1919. Pp. xii, 361.)

Uncertain expectations are aroused when a volume comes from a man who has been a university president, assistant secretary of state, American ambassador to foreign countries, a delegate to the Hague Peace Conference, a frequent lecturer before universities and bar asso-

ciations, and the author of a number of books which include *The Elements of Rhetoric*, *Impressions of the Kaiser*, and an admirable and scholarly *History of Diplomacy*. With two exceptions, the chapters of this book appeared in the *North American Review*; and one accurately describes their argument by saying that, although not in the style of, it would be approved by, the editor of that journal.

Mr. Hill condemns the League of Nations on the ground that "it is the work not of jurists building on solid foundations already laid, but of politicians holding a brief for particular interests or a personal theory." Little or nothing, however, is said to show that the pre-war international anarchy is better than an unsatisfactory, but possibly successful, international organization; yet this is a necessary premise to his thesis and in enumerating the faults of the proposed constitution, he by no means makes out a conclusive case against it.

In many respects, the author takes the line adopted by the Republicans in the senate, although what he writes necessarily shows more knowledge and thought. Fundamental principles precede and follow the most trivial objections. Nations are unequal; they have different ideals and there is no common form to govern their actions. In some respects, they are like business corporations and no uniformity is possible; economic sacrifices cannot be compelled for the benefit of others. A supergovernment should not be attempted for, although "sovereignty cannot in a juristic sense be longer regarded as strictly absolute" (p. 24), "the battle has been fought in the name of freedom. Let us remain free in the hour of victory." The same argument would have prevented the American Union or any other great federation which has helped reduce the possibilities of war.

At the same time, Mr. Hill says many things which will command cordial agreement. His most effective work, perhaps, is done in describing an unrepentant Germany and her trickery in changing governments. Following Mr. Root, the author makes a strong argument that the covenant is defective in its neglect of international law. Ambiguities in the draft are pointed out: does the league create a corporate entity and are the rights of neutrals and nonmember states clearly defined? A chapter on the treaty-making authority affords the interesting spectacle of a Republican quoting St. George and John Randolph Tucker. Mr. Hill suggests that the constitutional question may be serious: the treaty may be invalid because of the limitations it imposes upon the house of representatives. This suggestion has subsequently been dismissed as without merit by the senate judiciary committee.

In three concluding chapters, written while the peace was being negotiated, Mr. Hill argues the impropriety of the President's trip to Europe and the mistake of delaying the peace—was it really delayed?—to secure a League of Nations. It is suggested that a lasting peace is not so important as an ending to this war; indiscreet or ambiguous utterances in the President's speeches are considered ("The Debacle of Dogmatism"), and the league is linked up with our hesitancy in declaring war and a Wilsonian scheme to secure a compromise peace. Although Mr. Hill outlines what he conceives to be "The Challenge to the Senate," he does not attempt to answer it. He approves Mr. Root's reservations—all reservations in fact. Distinguished diplomat that Mr. Hill is, he nevertheless objects to votes in the assembly for the British Dominions, without a word concerning the fact that the assembly has no powers and that representation is therefore of no importance.

Historians of great crises and biographers of great men rely largely upon ephemeral pamphlets and journalists' impressions. Mr. Hill's volume will be of great service to the future historians and biographers of Mr. Wilson, some of whom, it is to be hoped, will endeavor to explain to their generations the very curious phenomenon—occurring in this book—of an attack on the league which comes from the Left and from the Right and is, in each case, strongly pressed by the same advocate.

LINDSAY ROGERS.

*University of Virginia.*

*The Oriental Policy of the United States.* By HENRY CHUNG.  
(New York: Fleming H. Revell Company. 1919. Pp. 306.)

In this book the author, a Korean, is less concerned with a study of American policy in the Far East than he is with the conduct of Japan there, and his principal purpose seems to be to warn the United States against the peril of "the consolidation of Asia under Japanese domination." This accounts for the striking difference between what one would expect from the title and what one finds in the volume. The first part, of eighty-nine pages, deals with the development of the American policy. It is, naturally, quite inadequate. The author has found our policy "lax and indifferent" in the past, and as for the future he would have an Anglo-American alliance for the purpose of helping China against the Japanese peril. The second part, of sixty

pages, is entitled "An Undercurrent Shaping the Policy: Japan's Control of Publicity." Here are repeated many of the current charges against Japan and the Japanese. Mr. Chung's tribute to Japan's "marvellously complete and skillful control of publicity, a control that enables her to manipulate easily the public opinion of the Western Powers," seems exaggerated to one who has had to read some of the articles about Japan which have appeared in our newspapers and magazines during the past year. Finally, part three, contains a number of documents and several reprinted articles, primarily concerned with Japanese conduct and policy.

Mr. Chung has shown considerable literary ability in presenting his subject. In spite of his severe criticism of Japan his attitude is, on the whole, more restrained than one might expect. The work also presents an air of scholarship which is not justified upon further examination. The selected bibliography is a well-chosen one, and there are many references to authorities. But in addition to some positive errors in fact, which might be overlooked, the book is untrustworthy because of the frequent assertions which are unsupported, and because of the impartial way in which authorities, good, bad and indifferent, are cited, ranging from the late John W. Foster to the columns of the *Chicago Examiner*.

PAYSON J. TREAT.

*Leland Stanford Junior University.*

*Judicial Settlement of Controversies between States of the American Union.* Collected and edited by James Brown Scott. Two volumes. (New York: Oxford University Press. 1918. Pp. xlii, 873; 874-1775.)

These two massive volumes bring together material of great value to students of constitutional and international law alike. The Supreme Court of the United States, so far as its original jurisdiction over controversies among members of the Union is concerned, is in effect an international tribunal. It is a court in which the several states sue and are sued by one another. In the years intervening between 1799 and 1918 no fewer than eighty-odd controversies of this sort have come before the court for adjudication, and in the course of this experience a notable body of jurisprudence has been built up. "The essence, function and limits of judicial power have been noted and analyzed; the distinction between judicial power on the one hand, and

legislative and executive, or political power, on the other, has been made clear . . . . and the judicial settlement of justiciable disputes by a court has been justified by precept, demonstrated by practice, and vindicated by results."

The records of these cases form the text of Dr. Scott's volumes. In addition, the editor has added, by way of introduction, a selection of leading decisions which deal with the nature of the American Union and the status of the several states composing it. To each case the editor has prefixed a concise note indicating the gist of the controversy and the nature of the decision as well as the importance of the issue decided. Explanatory footnotes are also inserted where necessary.

It is appropriate that these volumes should be issued under the auspices of the Carnegie Foundation for International Peace, because the lesson of what forty-eight states of a new continent can do by eschewing all resort both to diplomacy and to force of arms is one that the nations of the world might well study. Many wars have had their inspiration in controversies far less exciting to the passions of men than those which our states have settled without a shot in anger. It is often urged that controversies which concern a nation's honor and dignity cannot be submitted to adjudication, arbitration or compromise; but it is difficult to find in these eighteen hundred pages any sign that the states of the American Union have suffered any impairment in honor or dignity at the hands of the learned justices in Washington. These two volumes form a noteworthy tribute to the American respect for the principle of juridical determination. They point to a great lesson which one hundred millions of people have mastered during the last century. Dr. Scott has rendered a most useful service in bringing this material into such form that men can readily lay their hands on it.

*An Introduction to the Study of the Government of Modern States.*

By W. F. WILLOUGHBY. (New York: The Century Company. 1919. Pp. xiv, 455.)

This is an interesting and instructive book, from several points of view. The author feels that the teaching of government in the United States places too much emphasis on mere description and too little on "fundamental political principles." To meet the need of a background of this sort, he sets forth "the problem of government as a problem" and shows "how the leading states of the world have in practice met it."

There can be no doubt of our need of just such a book. Contrast, for example, the usual textbook treatment of the "Bill of Rights" with Professor Willoughby's penetrating analysis, in which "Bills of Rights" appear as a part of the problem of the relation of the individual and the state. The theory of natural law is examined and exploded, and the English and American methods of protecting the individual rights are explained. His excellent chapters on "The Modification of Constitutions," on "The Distribution of Governmental Powers Territorially," and on "The Functions of Government" also illustrate the wonderful possibilities of his method.

But this attempt is little more than a beginning on the long trail that leads to an adequate political science. It rarely rises above the level of a reclassification of descriptive material. The author treats the problem of sovereignty in the all-too-familiar nineteenth century, legalistic fashion; he yields to the war-begotten temptation to treat German theories of the state as though Stein, Dahlmann, Gierke, Neumann, and Preuss had never existed; and he makes the startling statement that the reason for the failure of all first attempts to create popular assemblies lay in the failure of these bodies to distinguish between the "functions of a national assembly as an organ of public opinion and one of legislation."

The author's genius for classification leads him into the vice of over-classification, with its concomitants of confusion for the student and added difficulty for the teacher. Especially noticeable in this regard is the enumeration of five "departments of government" (legislative, judicial, executive, administrative, and electoral); the superfluous treatment of procedural rights; and the insistence on procedural technicalities as a cause of the failure of national assemblies.

On the whole, *The Government of Modern States* marks progress in the literature of political science. But a satisfactory treatise on the subject, embodying the results of European as well as American research in the fields of political psychology, history and economics, still remains unwritten.

Harvard University.

M. H. COCHRAN.

*The Government of the United States.* By W. B. MUNRO, Harvard University. (New York: The Macmillan Company. 1919. Pp. x, 648.)

Professor Munro's study of American government is both timely and fruitful. It is timely in view of the revival of citizen interest in

the fundamental principles of civil liberty, political organization and social progress. It is fruitful in that it begets optimism without diminishing concern. It gives genuine satisfaction in its use as a text. It has the added merit of compassing the subject within space that will attract a large circle of readers outside the class groups in which its freshness, clarity and discrimination are particularly welcome. The absence of a certain lightness of touch is compensated for by the forceful marshaling of data and a logical development of the subject matter that is one of the triumphs of the undertaking. The book is descriptive and analytical rather than interpretative. It bears witness to careful research and a comprehensive grasp of the principles, organization and workings of American government. There is wanting the philosophical breadth of Lord Bryce or the penetrating insight of Mr. Wilson, but there is sanity and wisdom in plenty within its pages.

One looks for a more adequate statement of the danger to representative government due to the growing incapacity of the Congress. The undergraduate can appreciate the importance of this problem, the forces which create it, and the necessity of restoring the deliberation, discussion and criticism of public measures to the place now usurped by the struggle for control of administration, personnel and detail. He can also understand that the latter practice is incompatible with the primary purpose for which the Congress exists, that when followed it not only unfits the legislative body for the proper performance of its principal function, but in the end compels it practically to abdicate that function. It would seem that the present university generation is entitled to a consideration of the problem of saving Congress from its own lust for power and patronage in administration.

One notices the same disposition in the treatment of the time honored principle of separation of powers. The student is left under the spell of the tradition that the founders accomplished their purpose in the establishment of such a separation. In truth, the interlocking of the powers of government is so extensive and important that the effort and usefulness of legislative and executive branches are seriously impaired. Without the ungrudging coöperation of the other, neither one can function properly and such coöperation is difficult to secure. It is important for students to know that not a real separation of powers but a distribution of both legislative and executive powers between separate organs functioning through different persons and often enough through different parties is what actually exists; also that under such conditions there can be no assurance of harmony or



agreement except as one organ establishes substantial dominance over the other, or a party boss lords it over both.

It is a matter of regret Professor Munro did not give larger space to state government. Three-fifths of the volume (388 pp.) is devoted to the national government including the chapter on English and colonial origins, while but 247 pages are devoted to state and local government, of which but 147 pages deal with state government. In this compression of the treatment relating to state government in favor of the national system the author follows the established textbook practice. The result is that the springs of political development, the laboratories of experimentation, the rich experiences, the substantial services and the important problems in the field of state government are not given the consideration they deserve. Not only does this impair the value of the book from the standpoint of balanced instruction in American government, but it operates to discount state government in the minds of the student and the general reader. Happily for teachers who wish to deal with this field more fully excellent supplementary text material is available.

For the purposes of the book the treatment of local government is adequate in proportion. Two chapters are devoted to rural and four to city government. The latter reflect the excellence of the author's former studies in the municipal field and constitute the best condensed treatment to be found in any one volume work dealing with the American system as a whole.

The typographical work and apparatus of the book are satisfactory. There are some errors, e.g., the use of the word *committees* for *countries* in describing the treasury department on page 133. Viewed as a whole, however, Professor Munro's book not only fulfills expectations of merit as regards content and make-up but is distinctly superior to any other now available for the teaching of American government.

RUSSELL M. STORY.

*University of Illinois.*

*Government Organization in War Time and After.* By W. F. WILLOUGHBY. (New York: D. Appleton and Company. 1919. Pp. 370.)

For years to come the action of the United States in meeting the many problems of administration that confronted it in the prosecution of the great war will furnish a wealth of material for the political scientist

and the economist, and all who are interested in public affairs. Much of this material lies buried in masses of unpublished papers and records. Much more has not yet been intrusted to paper and will become public property only when the principal figures in the war administration at Washington write their memoirs. This process has indeed already begun. But meanwhile some one must make a beginning in the study of the operation of the war administration, and no one is more fitted to do this than the director of the Institute for Government Research.

Mr. Willoughby conceives the task of war time administration as one primarily of mobilization. He surveys in turn the mobilization of science, of publicity agencies, of finance, of industry, of trade and transportation. He surveys also the mobilization of food, of fuel, and of labor. But he makes no mention of fighting men, nor of munitions and supplies, except for the work of the aircraft production board. In short he has left the war and navy departments completely out of his book, as well as the commission on training camp activities and the Red Cross. However, there is more than material enough for a book without them.

Dr. Keppel in a striking introduction to the volume observes that "it is more than a record and comment upon the happenings of the last two years. It is a valuable collection of state papers." Here the reader and teacher will find well-chosen extracts from the principal acts of Congress and executive orders, relating to war administration, and useful summaries of those not quoted.

In general the organization and powers of the various civilian war agencies are duly described, although some important activities are inadequately treated, such as the thrift campaign of the war savings committee and the work of Mr. Leonard Replogle, the steel administrator. The comparatively little critical comment is judicious. For the most part information was lacking, at the time this book was written, upon which the results accomplished by the various agencies could be justly appraised. In such a work errors in names and dates are inevitable. Those which have come to the reviewer's attention are trivial. The volume is a much needed introduction to the study of the administrative agencies created during the war and will be invaluable to all teachers of American government.

A. N. HOLCOMBE.

*Harvard University.*



*Fighting the Spoilsmen.* By WILLIAM DUDLEY FOULKE. (New York: G. P. Putnam's Sons. 1919. Pp. 336.)

*Fighting the Spoilsmen* is indeed an apt title, for the book is a series of picturesque paintings of battles against the corrupt use of patronage, in which Mr. Foulke led the attacks. Fifteen pages only are devoted to the earlier and somewhat educational movements for the merit system of appointment to public office. Mr. Foulke, too, is the one person to have written this book, for he has done more "fighting" for the cause than any other single civil service reformer, and as the text reveals, enjoys a fight for a righteous cause. The Biblical saying, "It is good to be zealously affected always in a good thing," is well exemplified in the thrilling stories he tells.

Mr. Foulke's first fight against spoilsmen began when he was an Indiana state senator. He had to begin his fight without official authority, but with the aid of two prominent citizens, forming a committee of the Indiana Civil Service Reform Association, wonders were accomplished.

The committee first investigated the Indiana state hospital for the insane. Though unwelcome visitors, they unearthed a mass of testimony showing gross cruelty to the insane, who were "struck with the fist, shaken, knocked, dragged by the neck, and teased." Graft in purchasing supplies was brought to light. Appointments were made for political and personal reasons, with occasional clean sweeps as party factions came and went. Assessments were levied on the employees for campaign purposes. Crude attempts were made to hide evidence, but the committee persisted so vigorously that they found for example, "butter, infested with maggots, concealed in the sewer beneath the store-room to avoid inspection." The cohesive power of political plunder was such that it took thirteen years of constant "fighting" to clean out these Augean stables.

The rest of the book consists of accounts of removals under secret charges in President Cleveland's first administration; six reports of a committee of which Mr. Foulke was chairman, appointed by the National Civil Service Reform League during the administration of President Harrison, with a frank statement of Postmaster-General Wanamaker's insincerity; criticism of Cleveland's second administration, especially the rewarding of large contributors to the campaign fund with diplomatic appointments; the clean sweep of consuls under Josiah Quincy, assistant secretary of state. Praise for the good that

Cleveland did is not omitted. There is a chapter on superannuation and its remedies; and then follows another series of reports of the league's committee on President McKinley's civil service measures, with a just and subtle characterization of this amiable president; an appreciative account of Roosevelt's up-building, extension and strengthening of the merit system in his administration; and a history of the reform under Taft and Wilson.

Almost every phase of abuse of public patronage and improvements made by the merit system since Mr. Foulke's first fight in 1883 are vividly told in this book. He also gives an account of the enlarged program of the National Civil Service Reform League for getting rid of supernumeraries and the incapables, securing higher officials by competition of careers as opposed to competition of knowledge, and bringing efficiency into the departments. As a criticism it might be said more emphasis is laid on the somewhat ephemeral fights against individual spoilsmen, than on more permanent constructive legislation.

RICHARD H. DANA.

*Cambridge, Mass.*

*Organized Efforts for the Improvement of Methods of Administration in the United States.* By G. A. WEBER. (New York: D. Appleton and Company. 1919. Pp. xv, 391.)

This is one of a series of studies in administration published by the Institute for Government Research. The work is divided into three parts: Part I-deals with agencies for research in government, national, state, and municipal, both official and unofficial. After the description of the work of each agency is given a list of its publications and also reference to descriptive articles. Part II contains an account of the work of state and city organs of central administrative control; while part III deals in a similar way with legislative reference and bill-drafting bureaus. Altogether, about one hundred different agencies are listed and described. There is a preface and introduction by the editor of the series, Mr. W. F. Willoughby.

It would be very difficult for any one person to have any real familiarity with the work of so many different agencies, and therefore much of the book is composed of summaries of reports or extracts from descriptive articles. The account given of the work and recommendations of the consolidation commission of Oregon (pp. 159-160) consists of a two-page verbatim reproduction of a portion of an article

in the *American Year Book for 1918* (pp. 235-236), with no acknowledgment nor quotation marks. One result of this has been to lead the compiler into the error of supposing that the language thus borrowed describes the recommendations of the commission, whereas, in large part, it describes recommendations of the expert attached to the commission, which were not adopted by the commission nor printed in its report. Further, although a quotation is given from the report of the commission, no publications of the commission are listed, as in the case of the other state agencies.

On page 142 it is stated that the recommendations of the Illinois Efficiency and Economy Committee were "for the most part accepted and acted upon by the next General Assembly." In fact, the next general assembly, that of 1915, did practically nothing toward adopting the recommendations of the committee. Under the head of "articles," describing the work of efficiency and economy commissions, the compiler lists an account in the appendix to the report of the Illinois committee, but makes no mention of other more recent and at least as authoritative accounts, such as that by Raymond Moley in No. 90 of *Municipal Research*, though the latter publication is listed on page 188 (the author's name being misspelt "Maley"). A useful index is added, but the method of its compilation appears somewhat erratic. Thus, the names of some persons mentioned in the text are listed, while others are not, and the names of some authors of publications are listed, while others are not. In spite of these minor defects, however, the work is one of real value and usefulness, and no one can afford to be without it who is interested in the movement for more efficient and economical administration.

J. M. MATHEWS.

*University of Illinois.*

*County Administration: A Study Based upon a Survey of County Government in the State of Delaware.* By CHESTER C. MAXEY, Supervisor of Training School for Public Service. (New York: The Macmillan Company. 1919. Pp. xxi, 203.)

The subject of local administration has not received, from writers in the field of American political science, the attention which its importance deserves. Realizing the great demand for more first-hand knowledge in the subject, the New York Bureau of Municipal Research has begun the publication of a series of "Studies in Administration." The book under review is the first of the series. Giving first place in

the series to county administration was not an unwise choice, since the county is still our most neglected unit of government.

The purpose of this study and of other studies to follow, as stated in the introduction by Professor Beard, is to contribute first-hand information or "source material for the science of administration that is in the making." As to method: laws, charters and government reports play little part; the all-important source of information is "first-hand observations of institutions at work."

The basis of Mr. Maxey's study is a survey of the three counties of Delaware. The survey embraces their structure and organization, their financial procedure and business problems, and the administration of their alms-houses, jails, work-houses, and highways. The city-county relations of the city of Wilmington and the county of New Castle are also examined.

The "first-hand information" resulting from the survey, however, comprises not more than one half of the book. At least one half the space is given to the author's proposed changes in organization, financial and business procedure, etc. In fact, the reviewer was impressed not so much with the "source material" furnished by the survey, as by the author's clear and vigorous presentation of the advantages of the "manager" form of county government and the convincing reasons for the adoption of the business principles and methods championed by the New York Bureau of Municipal Research.

A less complete escape from the "bondage to legalistic traditions" and a thorough examination of the "laws, charters and government reports," in addition to the (at times confessed—see pp. 69, 138) hasty visit to the office of the official, or to the institution, under investigation would have enhanced the value of the study as a contribution to the science of administration.

The excellent classified bibliography will be greatly appreciated by all students of county administration.

ORREN CHALMER HORMELL.

*Bowdoin College.*

*The American Municipal Executive.* By RUSSELL McCULLOCH STORY, Ph.D. (University of Illinois, Studies in the Social Sciences. 1918. Pp. 231.)

In his study of *The American Municipal Executive* Dr. Story has performed a task which all interested in municipal government have

wanted some one to undertake for these many years. While much has been written of the accomplishments of individual mayors who have stood out prominently as leaders of reform movements, few efforts have been made to trace the political development of the office from the time when our cities were small and insignificant, to the present, when they constitute more than one third of our entire population.

Dr. Story's task has been well done. He has not only written a thoroughly readable monograph, but he has been unusually accurate in his statement of facts and his interpretation of political movements. He has taken a subject, which when analyzed in detail, as he has done it, is difficult to present in an interesting and, at the same time, complete and authoritative manner. He has accomplished both. Not that the office of mayor in our American cities is prosy or surrounded with an atmosphere of dreary routine. Far from it. The office of mayor has called forth more popular attention than any other elective offices except those of President and governor. But an analysis of charter provisions governing the qualifications for the office, methods of election, length of term, powers of appointment, legislative and judicial functions and the numerous other legal requirements governing and controlling the mayor, do not lend themselves easily to readable and interesting treatment. The author of this monograph has, however, succeeded in handling these details in such a way as to avoid making the volume a dreary technical analysis of dry-as-dust details, and has made it a scholarly, accurate and authoritative study of a public office which has come to be recognized as one of the foremost in the gifts of the people.

As a test of the accuracy of the author's statements of facts and his interpretation of political events, the reviewer has applied his own personal and rather intimate knowledge of Cleveland municipal affairs to the writer's statements concerning the Cleveland city charter and the administration of such mayors as Tom L. Johnson, Newton D. Baker, and Harry L. Davis. In every instance he has found both the statements of facts and the interpretation of events to be eminently correct.

Unfortunately, the introductory chapter seems to be lacking in the same carefulness of statement which characterizes the volume as a whole. The assertions about the decline of the city council as a coördinate branch of municipal government and the statement that the council has made "its last stand" in Chicago, that councils and commissions are only "passively tolerated" and that it may develop into

"a sort of electoral body to choose the mayor," are hardly justified by the history of the municipal legislatures and the importance of local representation in determining municipal policies. The municipal legislature in American cities has not, it is true, grown in strength as has the executive; yet it is, and will continue to be, a coördinate branch of government representing the local opinion and interests and determining broad general policies. Even in the city manager form of government, which many feel is the most extreme development of administrative control, the council or commission is still an important factor in determining policies. The council has, of course, been supplemented by the initiative and referendum in many cities, but this has been quite as much a check on the mayor as it has been on the council.

The omission, on many pages, of footnotes giving sources of the frequent quotations is somewhat disconcerting; and the complete absence of a bibliography of sources at the close of the treatise subtracts somewhat from the authoritativeness of the study.

Dr. Story's keen analysis of the advantages and disadvantages of the method of choosing the mayor by popular election shows that he has studied the office of the American executive not only from the theoretical but also from the practical point of view. As he points out, the undeniably weakest point in the elective mayor plan is the necessity of participating actively in partisan politics to the detriment of administrative efficiency; yet this weakness has its compensating advantages in the powerful influence which a real mayor exerts in the development of a sound public opinion. Mayor Jones of Toledo in his campaign and in his service as mayor, "compelled a discussion of fundamental principles of government." So did Tom L. Johnson in Cleveland, Mayor Rudolph Blankenberg in Philadelphia, and Mayor Pingree of Detroit. No other method of selecting the chief executive of a city gives the same opportunity for this valuable and important contribution to the political life of a community.

This distinct advantage in the elective mayor plan, no doubt, accounts for the rather lukewarm and conservative manner in which the author has treated the city manager plan. He is not nearly so enthusiastic in its praises as are many who are its advocates. He may be right in prophesying that the city manager will not supersede, at least in the near future, the elective mayor; and prevailing public opinion may also be right in its insistence upon popular government before it clamors for efficient government.



Dr. Story takes the same optimistic view of the future of city government which most men take who have given the subject serious study. He sees a growing improvement in the personnel of the candidates elected to the office of mayor, increasing nonpartisanship in the administration of local affairs, and a distinct advance in the independence of the electorate in selection of the chief executive of the city.

The monograph of Dr. Story is a distinct contribution and a valuable addition to the growing literature on the government of cities.

MAYO FESLER.

*Brooklyn, N. Y.*

*History and Analysis of the Commission and City Manager Plans of Municipal Government in the United States.* By TSO-SHUEN CHANG, Ph.D. (University of Iowa Studies in the Social Sciences, Volume 6. 1918. Pp. 290.)

The author of this monograph sets out "to trace the origin and development of the commission plan and the city manager plan," "to explain, through a detailed analysis of statutes and charters, the structure of municipal government under the new régime," and "to discover the extent to which the alleged advantages of the new plans have been sustained in actual experience." The first and second of these main objectives have been compassed with marked success; the third has not been attained with the same degree of success, partly because the task is a much more difficult one, but principally for the reason that it is not possible to assess the results of actual experience by using only printed sources of information.

Dr. Chang has worked over the published material on the subject with remarkable pains and thoroughness. Little that has ever been written on the commission and city manager type of municipal government has been overlooked. Facts and information garnered from every source are ingeniously woven into a readable and useful work, a veritable encyclopedia of the subject. Practically every city or town, large or small, that has had any experience with commission or manager is given space for at least the principal historical facts and a mention of any peculiarity of structure or experience. It would be difficult, indeed, to imagine any fact omitted which anybody is likely to need.

Footnotes citing the sources of the numerous direct quotations and the authority for nearly every statement made are collected at the end

of the volume. Altogether, 676 such notes are required for 242 pages of text—exceedingly well “documented” even for a doctoral dissertation. Like the seven chapters preceding it, the one devoted to “Summary and Conclusions” is a well-planned digest of the literature. It is not the conclusions of Dr. Chang, except by inference, but what others think about the commission government and city managers that we get. Wilcox, Munro, Dillon, McBain and many other authorities are marshaled in support of a qualified approval of commission and manager plans.

C. C. WILLIAMSON.

*New York Public Library.*

*City Manager in Dayton.* By C. E. RIGHTOR, and others. (New York: The Macmillan Company. 1919. Pp. 271.)

Dayton has been the object of numberless junkets, questionnaires and conversations by those interested in the results of city manager government. This is a justifiable interest since Dayton was practically the first and largest city to try this new fangled device for getting good government. That trial was held under many adverse conditions—hostility by a considerable part of the population, a highly developed bi-partisan political machine, still entrenched in the school board and county and anxious to assist in and witness a failure, and a foundation of corruption and inefficiency upon which to build honesty and effectiveness. If the city manager plan could succeed in Dayton, it should succeed in any city of similar size in America.

Mr. Rightor has measured that success, not in generalities or repeated theorems, but in facts. As director of the Dayton Bureau of Research, he and his collaborators had facts of what happened before and after January 1, 1914 (the beginning of the experiment), available to no others either in or out of the government. This group was neither a friend nor an enemy of the plan, except as it produced or did not produce results. It is particularly happy that the group should have realized its obligation to measure results, not alone for the student, but also for the inquiring citizen, and both can find in this book more answers to questions, and more questions not usually thought of, than would have materialized from a dozen casual investigations.

After citing the origin of the city manager plan and the organized efforts to inaugurate it in Dayton, the authors discuss every city activity, comparing results during the three years prior to and during

the four years under the new plan. These results are in detailed figures, illustrated with frequent diagrams and always summarized in non-technical language for the citizen at large.

The effect is a strong defense of city manager government, but criticisms are included, mistakes are indicated and opportunities for improvement suggested. Perhaps there might have been more of the latter, but the preface states "it is not concerned with the theories of government . . . contained in this or other forms of municipal management."

The book is the first real appraisal of the earliest practical experiment with a city manager, and it is able, honest and interesting. It serves also as a merited recognition of the large part taken by Mr. John H. Patterson in fighting the fight for effective city government in Dayton and in the United States, and by Colonel Henry M. Waite, the first manager, whose courage, integrity and ability defeated vigorous efforts to destroy the beginnings of the city manager movement—a program that now offers many benefits at least to moderate-sized cities.

LENT D. UPSON.

*Detroit Bureau of Governmental Research.*

*What of the City? America's Greatest Issue—City Planning.* What it is and How to go about it to Achieve Success. By WALTER D. MOODY. (Chicago: A. C. McClurg and Company. 1919. Pp. 441.)

Walter D. Moody's new book *What of the City?* is a much needed contribution to city planning literature. The author states the aim of the volume as twofold: First, to provide, through the accomplishments and experience of Chicago, inspiration and guidance for the professional city planner; and second, to spur to action the citizens of other municipalities.

While the book tells mainly the story of the Chicago plan, and at times in somewhat exaggerated terms, it will be directly helpful to any city in showing both the authorities and the citizens how to go about city planning and how to achieve success. Chicago is virtually the only large American city that has taken the planning of the whole city seriously. Chicago's methods have been more logical, more persistent, and more systematic than those of any other city. The story is convincingly presented in Mr. Moody's book. Especially valuable are the chapters dealing with city planning as a new profession,

and with publicity, or the making of sound public opinion, which is perhaps the most neglected phase today of many otherwise comprehensive city planning programs.

Some of the main facts which Mr. Moody records in the effort of Chicago to "put across" its city plan are as follows: (1) A report on *The Plan of Chicago*, costing \$85,000; (2) a popular booklet on the same subject, of which 165,000 copies were distributed; (3) a notable pamphlet entitled *Fifty Millions for Nothing*; (4) the active coöperation of the clergy, secured and directed through the publication by the City Plan Commission of "Seed Thoughts for Sermons;" (5) the official adoption of Wacker's *Manual of the Plan of Chicago* as a textbook for the Chicago public schools; (6) a popular illustrated lecture on "The Plan of Chicago," reaching directly 175,000 people; (7) a two reel moving picture feature entitled "A Tale of One City;" (8) the local newspapers—publishers, editors, reporters, feature writers, and cartoonists—all coöperating intelligently and generously to carry to the people the far-reaching benefits contained in Chicago's plan.

The book is particularly timely in these days of reconstruction, days in which civic building should be inaugurated, but in which little can be accomplished unless deep-rooted in democratic methods.

The illustrations are numerous, the best being those dealing with Chicago.

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#### MINOR NOTICES

Students of Canadian affairs, both past and present, will be greatly interested in Sir John Willison's *Reminiscences* which have been published in an attractive volume by Messrs. McClelland and Stewart (Toronto, pp. 351). The author is a veteran journalist who has had, during the past forty years, an intimate knowledge of public men and events in his own country. He has enjoyed the confidence of prime ministers, parliamentarians, and politicians. But that is not all. To this intimacy of knowledge he joins a firm grasp of government as a science, and he writes with a practiced hand. The result is a book of uncommon value and genuine interest. It is replete with shrewd observations, judicious comments on a multitude of things, and an unusual array of good stories. Unlike many books of its general type, moreover, this one is wholly free from malice; its author appears to bear no ill will towards any man, living or dead. On the other hand

the book fails in many points to satisfy the natural curiosity which its various chapters arouse in the reader's mind. It brings a good many narratives to the boiling point, and then drenches the fire by an intimation that the sequel to the whole story is confidential. Presumably Sir John Williston's book goes as far in its revelations as the proprieties allow. At any rate it is a thoroughly readable volume and a real contribution to the literature of Canadian political history.

Theodore Roosevelt's *Average Americans* (G. P. Putnam's Sons, pp. 252) is a chronicle of this young officer's experiences with the A. E. F. in France. The narrative is of the gossip sort and characteristically Rooseveltian throughout, which means that it is forceful in its opinions and displays no patience with mollicoddle methods anywhere. Lieut. Col. Roosevelt saw a good deal of America's share in the fighting, and he describes it with much greater vividness than might be expected from a writer of slight literary experience. The author's eye for the things worth telling is remarkably keen; his style is direct, energetic, and even combative. Col. Roosevelt's knowledge of the American constitution needs polishing up, however. He tells us in two places (pp. 37, 66), for example, that this document "forbids billeting," which it certainly does not. He also vouchsafes the opinion that "France has no genius for politics" (p. 39), which is a generalization that men better versed in the science of comparative government would hesitate to make. On the whole, however, one can read this book with high expectations and not be disappointed.

*Social Purpose*, by H. J. W. Hetherington and J. H. Muirhead (N. Y., The Macmillan Co.), is "a contribution to the philosophy of civic society." Various chapters deal with such topics as "Citizenship and Personality," "Neighborhood," "The Industrial System" and "The State." Much of the discussion is sternly and severely abstract, but the authors feel that every serious consideration of social or political questions must rest upon a coherent philosophical conception of the nature of civic society. They render a considerable service, accordingly, by pointing out that much of what passes as "social philosophy" nowadays is fundamentally hollow and untrue.

A sixth edition of J. Ellis Barker's *Modern Germany* has been issued by Messrs. E. P. Dutton and Company. The volume has been considerably rewritten and greatly enlarged so that it is almost a new

book. Mr. Barker, it will be remembered, devoted five editions of this well-known work to the courageous task of pointing out the probability and danger of a German attack on civilization. Twelve years ago the author warned Englishmen that they would have to fight for their existence as soon as the enlargement of the Kiel Canal was finished. The outbreak of the war came, as a matter of fact, only a few weeks after this work had been completed. He also predicted, long before the war began, that it would end with a revolution in Germany and the fall of the Hohenzollern dynasty. In these days Mr. Barker was regarded as an alarmist, but the rapid march of events has proved him to be a pretty fair prophet, as prophets go. He is also a good writer, marshaling his facts with considerable skill and weaving them together into an interesting narrative. But the price which the publishers have set upon Mr. Barker's volume, good book that it is, seems out of all reason.

Professor Morris Jastrow, Jr., of the University of Pennsylvania, has added to his various well-known studies of conditions in the Near East, a volume entitled *Zionism and the Future of Palestine* (The Macmillan Co., 1919, pp. xix, 159). The book deals with the beginnings of Zionism, with its various present-day aspects, and with the place of the Jewish question in world politics. There is a very interesting chapter on "Palestine of Today."

Under the title *Parliament and the Taxpayer* (London, Skeffington and Son, Ltd., pp. xviii, 256), Mr. E. H. Davenport discusses the history of the English budget system and explains the way in which Parliament now controls the national expenditures. The historical survey is admirably concise, although it leaves none of the important points neglected. Present-day methods are outlined very clearly. A chapter on "Ideal control" gives the author's suggestion as to improvements. A good bibliography, particularly of parliamentary papers bearing on the subject, is appended.

*Americanized Socialism*, by James Mackaye (Boni and Liveright, 1918, pp. 191), expounds the program of socialism as applied to American conditions. The author rests his case on the philosophy of utility, and explains that if socialism cannot be justified in this country on the score of usefulness it cannot be justified at all. The chapter on "How to Combine Democracy with Efficiency" is one that will interest

every student of political science, although not all will agree with the author in so easily sweeping away the practical difficulties. Unlike most books on the subject of socialization, however, this volume faces the concrete problems and for this reason it is of more than ordinary interest to the man of affairs.

The Carnegie Foundation for the Advancement of Teaching is sponsor for an illuminating study which Mr. Reginald Heber Smith of Boston has prepared and published under the title of *Justice and the Poor* (Bulletin No. 13, pp. 271). The study is an excellent piece of work in every way and of great interest to the student of legal procedure. The president of the foundation, in his introduction speaks of it as one of a "series of studies of legal education and cognate matters" which this organization is to publish. But Mr. Smith's volume, admirable as it is in the discussion of such things as defects in the present administration of justice and methods of remedying them, has little or nothing to do with teaching or the problems of teaching, whether in law schools or elsewhere. It indicates that the Carnegie Foundation has a very liberal idea of the term "cognate matters" as applied to its own designated field of activity.

A volume entitled *Religion and Culture*, by Dr. Frederick Schleiter, has been issued by the Columbia University Press. It is a critical survey of the methods of approach to certain social phenomena which are religious in character.

A study of *The Hayes-Conkling Controversy, 1877-1879*, by Venila Lovina Shores (pp. 279) forms the fourth number in the Smith College Studies in History for 1919.

The Russell Sage Foundation has recently published under the title *American Marriage Laws* (pp. 132) a digest of legislation relating to marriage in the several states.

The Naval War College has issued a volume of documents bearing on neutrality and the breaking of diplomatic relations during the war. It bears the general title *International Law Documents* (Government Printing Office, 1918, pp. 295) and is well annotated, besides having a good index.

Those who desire to read a review of conditions in Austria, Hungary, Poland and Germany by one who does not fail to conceal his general sympathy with soviet doctrines will find what they want in H. N. Brailsford's *Across the Blockade* (N. Y., Harcourt, Brace and Howe, 1919, pp. 174).

*Education and Autocracy in Russia* by Daniel Bell Leary (pp. 127), is the first issue of the new University of Buffalo Studies.

Many well-known Englishmen have collaborated in writing the various chapters which appear in *Labour and Capital after the War*, edited by S. J. Chapman (London, John Murray, pp. 280). The volume deals with English conditions and problems exclusively.

Recent publications by the Carnegie Endowment for International Peace include *The Early Economic Effects of the War upon Canada*, by Adam Shortt, and *The Early Effects of the European War upon the Finance, Commerce and Industry of Chile*, by Professor L. S. Rowe. These two studies are bound in one volume. Another volume includes a study of the *Economic Effects of the War upon Women and Children in Great Britain*, by Irene Osgood Andrews. Closely related to this is Professor Benjamin H. Hibbard's volume on the *Effects of the Great War upon Agriculture*. Two larger volumes deal respectively with the *Direct and Indirect Costs of the Great War* and with the problem of *Disabled Soldiers and Sailors*. The former study was prepared by Professor Ernest L. Bogart of the University of Illinois; the latter by Professor E. T. Devine of Columbia.

The Century Company has brought out a volume on *Self-Government in the Philippines* (pp. 210) by Maximo M. Kalaw of the department of political science in the University of the Philippines. The book gives a concise and up-to-date survey of insular government, including financial administration.

A small volume on *Government Ownership of Public Utilities in the United States*, by Leon Cammen, is to be had from Messrs. McDevitt-Wilson, 30 Church St., New York.



## RECENT PUBLICATIONS OF POLITICAL INTEREST

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BEATRICE OWENS ASHTON and CLARENCE A. BERDAHL

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# The American Political Science Review

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Vol. XIV

MAY, 1920

No. 2

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## THE FUTURE RUSSIAN CONSTITUTION AS SEEN BY RUSSIAN LIBERALS

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In the historical development of individual nations revolutions come and go as tremendous earthquakes, upsetting the standing order and creating new constellations and configurations. After an earthquake on former plains new mountain ranges arise and, vice versa, enormous peaks suddenly disappear; quite so in the case of a revolution, which overturns century old institutions and organizations. At the time when the upheaval occurs, it often seems that the whole social structure is destroyed forever and that something entirely new is being created. And yet, everyone who has studied history knows very well that even in revolutions we have a constant evolution, that much of the old order remains and that the new institutions have many attachments in the past, no matter how completely new they may seem at the moment of their political birth.

Take the French Revolution of 1789 as a most vivid example. It might have seemed to contemporaries that the whole former French state and government, the social as well as the economic structure, had disappeared and were utterly destroyed. We know now, however, that much of the ancient French institu-

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tions remained and were the basis for further evolutionary developments.

There was a time when historians were very apt to magnify the glory of revolutions; prompted naturally by political motives; this was the case mostly with socialists and radicals, though the opposite method of villifying social upheavals is, perhaps, politically much worse. It entirely depends on the moral judgment, the individual investigation, what light is thrown on past events. However, human progress and the social development of nations follow a continuous evolution, regardless of the moral estimate of contemporaries.

One must remember that the judgment of many historians was warped by their political ideals; their statements, in consequence, were only too often biased. It is axiomatic, for instance, that an insurrection which fails is regarded as a disgraceful riot of criminals and rascals, and that one which is successful is called a revolution or war of independence by champions of liberty. In other words, nothing succeeds like success. No wonder Napoleon always chose exclusively successful men for the execution of his plans.

One must further keep in mind that any revolution means mostly destruction; and that only after the revolution is over does the constructive work, the building up of the new social or political order, begin. Menou said long ago: "*En revolution il ne faut jamais se mettre du côté des honnêtes gens—ils sont toujours balayés.*" And Chateaubriand, a representative of the conservatives, who suffered most, added: "*Les honnêtes gens ont toujours peur—c'est leur nature.*" It is perfectly true that the majority of honest people are always terribly frightened by revolutionary events. This is one of the many reasons why so little creative work can be done while the revolutionary upheaval is still in progress; fear is always coercive, repressive, conservative and constrictive, and never can achieve or create anything. But it is not at all true that the majority of the nation, the honest people, come back to work, after a revolution has taken place, without having learned anything. The fact that some of them have not forgotten the past is never dangerous,



as many of the new institutions created by revolutionary events generally find themselves firmly established after the revolution is over. Thus, one can be quite sure, that, no matter what government or system will evolve in Russia from the present state of anarchy and Bolshevik destruction, many of the new ideas have come to stay. I have no fear whatever for the so-called "winnings of the Revolution;" on the other hand, the former old régime of Russia is dead forever and cannot be resurrected.

The future fathers of the new Russian constitution will have a very difficult task ahead of them, much more complicated than the work of the American statesmen of the eighteenth century, for the conditions of modern Russia are much more involved and perplexing. One thing, however, seems absolutely sure: We all accept democracy as axiomatic; the present development of Russia gives us good reasons to think that there will be a firmly established democratic government. Russia's social body is very homogeneous; this is the best possible guaranty in this respect. Then, too, her economic development and the absence of plutocracy are sufficient safeguards for future democratic institutions; most political parties, also, stand for democratic ideals. The fathers of the Russian constitution will have to keep in mind that power, as such, is not good, nor bad, and that it is only the way it is used that makes it good or bad; and the way it is used depends entirely on the organization of the state and its organs and the guaranties the citizen will have for his personal life and freedom. We have many examples of how the use of power, when the necessary guaranties are lacking, poisons those who make use of it. The lessons of history, in this respect, will be very useful.

Though much of the preparatory work has already been accomplished, and most of the constitutional questions are constantly discussed in Russia, all the main questions of principle will have to be decided exclusively by a national assembly. Such a body alone can represent the will of the people, and be the sole lawful master of Russia. It is in a national assembly that the real sovereignty of the people finds its best expression.

For many generations the educated Russians were hoping for such an assembly to meet for the enunciation of the main constitutional principles, embodying the will of the nation. It was a tremendous mistake of the Bolsheviki to have dismissed by force the first national assembly which met in January, 1918; the Russian people felt extremely disappointed and are still bitter against the Bolshevik government for having done this. The explanation of this foolish act is simple: The Bolsheviki were forced to do this by their own principles and by their whole conception of government. Their main principle is the dictatorship of the proletariat, a hopeless minority of the Russian people. It was only too natural that they were afraid of the majority of the national assembly, which never would have acquiesced in their policy and with their program. They had to get rid of the assembly, which they did in their usual drastic way. The only good consequence of this act was that it increased the prestige of the national assembly, and made the nation long for a new one as soon as possible.

Questions of principles that will have to be settled by the national assembly all belong to the fundamental essence of constitution-making, with one possible exception, the land question. These fundamental questions are: the form of government; the distribution, balance and inner organization of the powers of state; the form of relations of Russia proper to the non-Russian nationalities, which once were a part of the empire of the Tsars; the rights and privileges of the church; and the national defense. To these we must add, as mentioned, the land question; it is so very important and involves so many serious problems, that nobody, except the national assembly, could solve it.

During the Bolshevik régime the peasants seized the land belonging to local landlords, as well as all the crown and state property. For many years previously there existed a great dearth of land among the peasants, which the old government hardly ever tried to satisfy, and certainly never succeeded in satisfying. As soon as the Bolsheviki came into power they redeemed their promise of land for the peasants, and complacently looked on while the latter took possession of all the land they

could get, incidentally burning down the landlords' houses, destroying the property they had no use for and often murdering the lawful owners. There cannot be any doubt, however, that a need of land really existed, and that it ought not to be taken away in the future from the peasants; otherwise, we can be quite sure, that in a decade or even sooner we shall witness a new revolution. The peasants at present have no legal right or title to their newly acquired land; it is only the national assembly representing the whole nation that can sanction such possessions. A complementary question is that of compensation due to the former landlords. In that case, too, only the national assembly has the right to decide if any compensation is due (personally, I think it is fair and necessary), in what form it could be paid (for instance by means of a government loan), and what the amount ought to be (per capita or per acre). The question does not belong to the domain of constitutional law, but can be settled only by the national assembly.

However, this ought to be the only exception. The assembly should devote all its time to working out a constitution, and as soon as the latter is ready it ought to dissolve and transfer all further legislative activity to the new parliament. If this procedure is not followed, the assembly will never be able to finish its work, because as soon as nonconstitutional questions begin to be discussed there will never be an end to it; gradually the assembly will drift into the work of a parliament and perhaps even substitute itself for parliament.

The fundamental constitutional questions can be divided into two groups: in the first one we find the three most important matters, concerning the form of government, the powers of the state, and the question of nationalities; in the second group belong the additional questions, for example, concerning the church and the national defense.

Many Russians consider now the question of the form of government of minor importance. We all know examples of monarchies which are much more democratic than many republics; for example, England. There are a number of republics which are less democratic than the British monarchy. The modern

development of England is quite astounding; the English people now accept with equanimity things which some four or five years ago would have seemed absolutely inadmissible even for a republic. It is not the head of state who in our day directs the policy of his country, but a responsible ministry, and the majority of the people do not pay any attention to his limited powers. It is more a question of psychology or of feeling of the nation.

At present in Russia just this feeling is absolutely uncertain; no one can ascertain how the Russian people, as a whole, will decide to solve it. The educated classes, without any doubt, whatever their personal preferences might be, will willingly abide by the desire of the nation; the will of the people will be formulated by the national assembly. This, possibly, will be the best example of the functioning of such an assembly. In either case, however, in choosing a monarchical or a republican form of government the assembly will have to decide not only on the question of principle, but simultaneously also on the method of selecting the head of state. If Russia is to be a republic, the assembly will have an easy task, simply choosing among the many examples of western republics. One may only suggest in this respect, that just as in the time of primitive American conditions of the eighteenth century a graded election was preferable, especially because of the illiteracy of the Russian people and the recent social unrest, so for a time, at least, a graded election of the Russian president would seem the better choice. Much more difficult will be the task of the assembly if it decides on the monarchical form of government for Russia. The finding of a candidate and the founding of a dynasty will be anything but easy. This can also be done only by the assembly, as the new monarch must receive the sanction of the nation.

After having settled this important matter the assembly will have to start to work on the future constitution, the organization of the legislative power, the reconstruction of the executive power and the revision of the judicial power. The two latter require less attention, as many of the old institutions could

remain, with some additional changes. The legislative power on the other hand, will have to be entirely reconstructed. The former Imperial Duma, especially after the reform of June, 1907, did not represent the people at all, and ought not to be revived in its old form, though the name "Duma" will certainly remain. It seems that a single Russian chamber would be most appropriate, especially if we consider the possibility of a future Russian federation, which will have to have a two house federal parliament. Under these circumstances one chamber for Russia proper will be entirely sufficient. Moscow is preferable for the seat of the chamber; the national assembly will certainly meet at Moscow. As to the future parliament there can be a choice between Moscow and Petrograd. One consideration, however, is most important: the parliament must be in the same city with the government, for there must exist the closest contact between them all the time.

Universal suffrage, woman suffrage included, is now generally accepted by Russian public opinion. Until recently there was some opposition to it, founded on the argument that universal suffrage would work badly in Russia considering the great number of illiterates; these latter, it has been pointed out, would be tools in the hands of corrupt politicians and political machines. This argument does not seem to hold, however, for two reasons: Limited or restricted suffrage does not *eo ipso* do away with corrupt practices; there exist many guaranties and institutions for the prevention of corruption at elections, direct primaries and publicity are, for example, the best of such means. Then, too, it would seem that Russian public opinion and educated people have for so many years stood for universal suffrage that they will not give it up at present. The conditions of illiteracy were worse in former days; every decade brings us a little betterment in this respect, and I do not see any reason to change our ideals now. Suffrage must be universal, equal, secret and direct.

Another question is, does this suffice or are new institutions also necessary, for instance, the popular initiative or referendum? Is there any need of introducing them also into the constitution,

and would not the illiteracy of the people prove in this case harmful? Opinion in Russia seems to be very much divided, and it is doubtful if these institutions will find a sufficient number of supporters. It may be pointed out that they belong to more firmly established and more developed constitutional systems than the Russian, and that a certain time ought to elapse before their introduction. The referendum is needed most on questions of principle, for ascertaining the will of the people; it is not often that such matters arise. There is also another important requirement for the good working of a referendum, namely, the relatively small size of the voting community; the larger the community is, the more uncertain results are produced by the referendum. In Russia the area will always be tremendous, no matter how the voting system is arranged. There is a much more important consideration, however, which would seem to point against the necessity of including this institution in the constitution: the national assembly will solve all the important questions of principle, and for some time there will not be anything left for a referendum. The constitution must be so constructed, that, though not including the referendum or the direct legislative initiative, it would leave open the possibility of their future introduction, when the nation will find it necessary. The other details of organization of the legislative chamber are the usual ones found in all modern constitutions, and do not necessitate special mention.

The constitution, most decidedly, ought to be of the rigid American type, and not easily amendable; this must be the case especially because there is every reason to believe that it will be a federal constitution. The more difficult the process of amendment is the more stable a constitution always is, provided that it is from the beginning well adapted to the social and economic surroundings. In that case, however, as in the United States, the courts ought surely to receive the power of deciding on the constitutionality of laws; this is a most important corrective and will work well in Russia.

At the head of the executive power there will be either a president or a monarch; but the real power will be in the hands of

a responsible ministry, composed of men who will have the confidence of the legislative chamber and will belong to the majority of the house. This is parliamentarism, pure and simple, as it exists at present in most European countries; England is certainly our best example. It is interesting to note in this respect that the socialists and radicals in many countries are now deadly opposed to parliamentary rule. The reason is easily found: this system of government is based on majority rule; whereas the socialists want a minority rule, the dictatorship of the proletariat, which is everywhere in the minority; and with the parliamentary system, they have no chance of establishing their selfish rule. This is also the case in Russia. There is no doubt that parliamentarism has many faults and drawbacks, but a modern state can hardly do without it and must only establish sufficient safeguards and checks to counter-balance such deficiencies.

The system of the Russian ministries, their inner organization and work will probably remain as of old. Even the Bolsheviks did not change much in this respect, trying to adapt themselves to the old machine. A single exception, however, must be noted here: some ministries (foreign affairs, war, navy and others) will have to become federal institutions, whereas others will be purely Russian. The different administrative branches developed historically and were well adapted for their respective purposes. The Russian civil service system worked on the whole also very well, with one exception, namely, the question of responsibility, which either was entirely absent or not sufficient. This great evil, however, was already remedied in 1917 by the provisional government, which introduced an elaborate system of administrative courts and started to revise the laws concerning the civil service. The new government will have only to take up the work where it was stopped by the Bolshevik uprising.

There might be a question, further, of introducing the modern idea of recall. This would concern, naturally, only the elective administrative officers, as Russians never applied this principle, even in theory, to the judges or courts of law. I do not think that this institution will find many supporters in Russia.

By far the most difficult problem, however, will certainly be the establishment of the future relations with non-Slavic nationalities, which once were a part of the empire of the Tsars, and have separated themselves from Russia under the Bolshevik régime.

There will be a most decided clash of principles and possibly an intense feeling of national suspicion, if not of antagonism. The small nationalities, bordering on the Russian state, have developed recently a very strong feeling of independence and all stand for national self-determination. There cannot be any doubt that much of this is due to the mistaken policy of the former autocratic government, which never wanted to concede self-government to the different nationalities. Then came the German propaganda. Germany very cleverly made use of the already existing animosity; in order to weaken the Russian Empire the Germans diligently spread a poisonous propaganda, and helped to fan the flames of national conceit. Finally in addition to these two factors came the Bolshevik upheaval, with its devastation and plunder, which totally estranged the small nationalities from the Russians; the non-Slavic peoples did not see much difference between the Bolsheviks and the Russian people at large, and accused the whole nation of the misdeeds of the Bolshevik government.

All this has helped to create a strong movement of disintegration, which ruined the Russian Empire. In addition, we must mention the faulty policy of the Allies and especially of England, towards the peoples bordering the Baltic Sea, which helped to foster unreasonable hopes among these nationalities. One must keep in mind that Russia has some very vital interests involved in the question; for example, there is the question of Russia's national defense and strategic fortification of her frontiers; then, too, Russia's Baltic fleet cannot exist without having at its disposal well protected harbors; further, there is the question of protecting Russia's frontiers against any enemy attack, and against the enemy's using some of the territory belonging to the small nationalities for deployment of an army against Russia; Russia must have, too, a free access to the sea for her



export trade; and, finally, she must have sufficient guaranties that the foreign policy and diplomacy of the smaller nationalities would not in any way harm Russia, in concluding, for instance, some offensive and defensive alliance, and so forth.

The difficulties of the situation are further increased by the tremendous development everywhere, I might say all over the world, of national self-consciousness, which in our day seems not to know any limits, and in so many places has developed harmful consequences. The greatest evil of our times is this perverted, thwarted and unsatisfied nationalism, which has cropped up in so many countries as one of the most pernicious consequences of this terrible war. There certainly will be much suffering, quarreling and bickering before things settle down in this domain; the greatest sufferers will unfortunately be the smaller peoples, whose size and weakness will always be their greatest handicap.

There is no doubt whatever that the best outcome for Russia is a federation. The establishment of this, however, will not be an easy task. Such work will be far more difficult and complicated than that performed by the fathers of the American Constitution, and this for two main reasons: first, because the social, economic and political conditions of the present day are much more complex and involved; and, secondly, because Russia evidently cannot be satisfied with a federation of the American type. The non-Russian nationalities, which might join such a federation, all have very different requirements and are not at all homogeneous; equal conditions for all of them will be quite impossible to establish. Just as in the British Empire, some of them will ask for nearly full independence, Russia only protecting her strategic and diplomatic interests; whereas in other cases simple self-government will be entirely sufficient. Thus, the only possible chance of success lies in the adoption of a plan of federation of the British type, where the scale goes all the way from practical independence (Canada or Australia) to protectorates (Egypt or the Crown colonies).

With each of these nationalities, Russia will have to conclude a separate agreement or understanding, safeguarding the inter-

ests of both sides. On the Russian side, this can be achieved only by the national assembly, for no other body will be able to speak in the nation's name and bind the latter to such an agreement.

The skeleton of such a federation will be as follows: There should be a federal parliament, parallel to the Russian chamber, composed of two houses of the American type, a lower chamber, representing the people, and an upper house, representing the states. The competence of this parliament will be strictly limited to federal questions, enumerated in the constitution.

The head of the state or chief executive will be either elected (if president) or chosen (if monarch) by the people of the whole federation; he ought to be simultaneously the chief executive of Russia proper, and will have also powers strictly limited by an enumeration in the constitution. The federal executive power will comprise the following branches: The foreign office, the war and navy departments, the treasury and commerce departments (these two latter branches will direct the federal fiscal and economic policies, including federal taxation, federal customs and federal currency), and a department of justice, with an attorney-general at its head. The latter will be the government's law expert and also handle all federal matters arising between the states; the federal interests will be looked after by special representatives (for example, governors-general) subordinate to the attorney-general. The federal ministers and the attorney-general will be the cabinet, responsible to the federal parliament.

Finally, there will exist federal courts, which will have the right to examine the constitutionality of all legislation, federal as well as local.

In conclusion must be mentioned a few questions, less important from the point of view of principle, which the national assembly will also have to settle. First, the question of the relations of the church to the state; a well drawn line of separation between the two seems most likely and best suited for Russia, though the orthodox church might receive some form of support from the state. Secondly, the question of the army; namely, must there exist a volunteer militia or a regular army

composed on the principle of general service of all citizens? The latter seems much more appropriate to Russian conditions. Finally, there might arise the question of nationalization of certain industries and railroads; in that case, also, the national assembly certainly will be the only judge. Personally I think that such nationalization is quite out of the question at the present moment. If such countries as England or the United States, with their highly developed industries, are still in doubt as to the feasibility of their nationalization, there cannot be any doubt at all in Russia, whose industrial development is yet so primitive. The Russian state is much too young, unstable and unorganized to be able to undertake such a huge task as the running of national industries. With the railroads the case might be a trifle easier, because in former times the Russian state owned many of the railroads; the latter will probably remain in the hands of the government, but this ought not to mean the nationalization of all the railroads and the cessation of private enterprise.

## SOME PHASES OF THE FEDERAL PERSONNEL PROBLEM

LEWIS MAYERS

An observer who had much to do with the departments at Washington once remarked that the whole philosophy of rank in the government service was unsound. Anyone, he reasoned, could be the head of a department; to be the head of a division was much more difficult; while the office boy must be a real diplomat. There is doubtless much of truth in this view; and it may perhaps be pleaded in excuse of the habit which discussions of the federal personnel problem seem to have developed, of beginning (and, not infrequently, also ending) with the case of the government clerk.

Nevertheless, it is to be questioned whether the government clerk, or the subordinate personnel of the administrative services of the government generally, presents nearly so difficult a question as does the directing personnel. By and large, doubtless the most immediate problem of the federal personnel system today is to secure in the posts of responsibility and discretion a capable type of administrator.

In this view, logically the first item to be considered in a discussion of the federal personnel problem is the method of selecting the chief of the administration—the President; and, next in order, the method of selecting the chiefs of the executive departments—particularly, the chiefs of the predominantly administrative departments—post office, war and navy. Since the President must necessarily be chosen on political and not administrative grounds, and give his main attention to political and not administrative matters, assurance of the capable discharge of his administrative functions can obviously be had only by the creation of a central organ of administration to act in his name on all but the most important of administrative matters;

and if the members of the cabinet are to continue to be chosen primarily as political advisers, assurance of the proper discharge of their administrative responsibility can likewise be had only by the creation in each of the departments of a nonpolitical administrative deputy of experience and proved capacity. To examine possible methods of effecting these proposals would, however, require so lengthy a discussion, and would lead so far afield into political questions, that it must be omitted from this paper, and attention given to those ranges of the directing personnel which are free from all political complication.

With respect to the upper ranges of the directing personnel, at once the simplest and most necessary measure for improving the administrative calibre is the complete elimination of politics in their selection. At present the hold of politics on the higher administrative posts of the government is very irregularly distributed. It is most uniform in the group of assistant secretaries (which embraces also, of course, assistant attorneys-general and assistant postmasters-general). All, as is well known, are political appointees. In not a few cases, they are quite capable; but the method of their selection affords no continuing guaranty of their capability, nor does it insure the retention in office of those whose capability is established.

The heads of the several bureaus and services are only in part political appointees. The increase in the number of scientific bureaus in recent years has steadily enlarged the number of bureau chiefs who, originally selected solely for their professional standing, hold office virtually on good behavior though nominally removable at the pleasure of the President. Of the 44 heads of bureaus and services, about 25 now fall in this nonpolitical class.<sup>1</sup> Of the remaining 19, the status of 5 is not yet fixed by tradition; while that of the other 14 is definitely political. Of these, as of the assistant secretaries, some are of satisfactory administrative calibre; but as with the assistant secretaries this fact is, if not fortuitous, at least incidental. The placing of all the bureau heads upon a strictly merit basis is an obvious immediate need of the service.

<sup>1</sup> Of these, 10 are appointed by the heads of the department.

In the departments at Washington political appointments in the ordinary sense do not usually extend below the heads of the bureaus or services, though here and there are found "excepted" places for which no good reason exists, and which a vigorous civil service commission would long since have had swept away by the President.

As applied to local offices the viciousness of the spoils system has been much more pronounced and obvious than in the case of the posts at Washington. The local posts are far greater in number and are spread over the whole land, and in the smaller places are likely to be captured by an obviously undesirable type of ward politician, rather than by the more unctuous type usually selected for the political post at Washington. Moreover, the local employee has a vote, while the Washington employee has not (or does not use it); and it is therefore especially undesirable that the local competitive employee should be under the direction of a local politician.

Until within recent years, it was the postmasters of the smaller cities and large towns who typified the local federal political officeholder. For some years a general improvement in the calibre of this class of postmasters appears to have been going forward; but the first definite formal step in the direction of eliminating politics from their selection was taken by President Wilson in his order of March, 1917, directing the civil service commission to hold open, competitive examinations for all vacancies in presidential postmasterships arising by death, resignation, or removal, and binding himself to the nomination of the candidate rated highest unless good cause should appear for passing him over in favor of the next on the list. The "presidential" postmasterships, it should be explained, are all those in the first, second and third classes—that is, all whose annual sales are \$1900 or over. It thus embraces all but the small village offices. There are some 10,000 "presidential" post offices and under the law all must be filled by nomination of the President and confirmation by the senate. The enormous scope of this order of President Wilson's is thus obvious.

It should be understood, however, that the order has no application to a vacancy created by the expiration of the four-year term which the statutes prescribe for all presidential postmasters. The official explanation for this omission is that capable postmasters are reappointed at the expiration of their four-year terms, and hence no examination is necessary; while where other postmasters are removed before the end of their four-year terms, examinations are held under the order. Is this the real reason or merely the good reason? Is the real reason that the exclusion from the operation of the order of vacancies arising by expiration leaves a comfortable margin of postmaster-ships in each state in which senatorial courtesy may still disport itself? The gratuitously detailed statistics of the operations of the department, published in its annual report, throw no light on this question.

The shape of the area still dominated by politics in the remaining field services is, as in the departments at Washington, irregular. Some of the important field services are wholly under the merit system; in others, the chief of each local office is a political appointee. Generalizing, it might be said that in the newer and the more technical services, the local chiefs are selected by merit, while in the older and the more purely administrative services they are political appointees. Examples of the former class are the reclamation service and the forest service.

The principal services in which the chief local officers are still political appointees are: the customs service, the internal revenue service, the mint, assay and subtreasury services, the department of justice (embracing district attorneys and marshals), the public lands service, and the immigration service.

Such is the present state of the art of rewarding one's friends in the higher levels of the federal administrative personnel. What is the best method of attack for those who would see politics completely and finally driven out of the federal service?

The frontal attack would consist, of course, in abrogating the "advice and consent of the Senate," which is by statute required for virtually all the posts just reviewed. Such a change would place all these posts within the scope of the civil service law; but

it would not necessarily throw them open to competition, as, under the law, the President might still except them from examination (as he has done, for example, with national bank examiners). Going a step farther in the same direction, it would be well to provide for the appointment of all these officers by the heads of the several departments instead of by the President. Appointment by the President carries a deep-rooted tradition or flavor of politics which of itself constitutes a tangible obstacle to the establishment of the merit principle.

Such legislation should, of course, be accompanied by provisions for the abolition of the four-year term (or other fixed term) wherever it still obtains. The four-year term for local officers is today a senseless survival of a practice thoughtlessly legislated into existence at the beginning of the government for the office of marshal, and subsequently from time to time extended to other local offices. The utter inconsistency of its present statutory application should of itself be sufficient to condemn it. Collectors of customs are appointed for a four-year term, but collectors of internal revenue for an indefinite term. It is a good example of the lack of principle and sound policy which has throughout characterized the personnel legislation of Congress.

It cannot be contended that the mere abolition of the four-year term will of itself tend to convert the posts affected from a spoils to a merit basis. It is notorious that some positions held by an indefinite tenure are fully as much the plaything of politics as are those held for a fixed term; but it is certain that the merit principle cannot firmly be established in any administrative office so long as it rests upon a fixed term. The action of President Wilson in opening postmasterships to competition is much in point here. So long as the four-year term remains it will be difficult to induce experienced and capable postal employees to enter the examination; for the chance of reappointment at the expiration of the four-year term depends wholly upon the observance by the next administration (or even by the same administration, should it remain in office) of a "policy" declared by it to exist but subject to no rule or official scrutiny.



The abolition of the four-year term for local offices is clearly then a measure upon which all may unite. As for the rest of the legislative program outlined, questions may be raised. The abolition of senatorial confirmation, and the transfer of appointing power from the President to department heads would be so radical a step and so distasteful to politicians, particularly those of the senate, that legislation embodying it could be obtained, if at all, only by a highly organized and costly propaganda sustained over a considerable period. Such legislation was actually recommended to Congress by President Taft in two successive messages, but never made any real progress in Congress; and neither the repeated recommendations of the civil service commission nor the persistent though limited publicity of the National Civil Service Reform League have served appreciably to increase the probabilities of enactment. Undoubtedly, such a legislative program could be forced through; but the forces necessary to accomplish the work of forcing do not seem likely to materialize.

A line of action which would seem to have greater promise of results is to bring pressure persistently to bear upon the President to extend the merit principle to all of the offices in question, as he already has to some; setting up, as far as practicable, formal methods of selection, as has been done in the case of the consular service and the presidential postmasterships. In thus looking solely to the President for action, there is involved no attempt to ignore Congress or the senate contrary to existing constitutional or statutory provisions; for, aside from the inherent discretion as to method of selection, which the possession of the power of appointment vests in the President, it has been the law since 1871, twelve years before the enactment of the civil service law, that the President may "prescribe such regulations for the admission of persons into the civil service of the United States as may best promote the efficiency thereof, and ascertain the fitness of each candidate for the branch of the service which he seeks to enter."

Once the President can be induced to set up a formal recognition of the merit principle in his nominations to these offices,

"the advice and consent of the Senate" will become as perfunctory a ceremony as it has for decades been in the case of the commissioning of army and navy officers, or surgeons of the public health service. Under President Wilson's order of 1917, there have to date been nominated, as a result of open competitive examination, some 1400 postmasters. Aside from a few exceptional instances where the question of whether the procedure required by the order and the regulations had been observed, in no single case has any senator ventured to oppose the confirmation of a nomination so made.

It may be thought that a system resting on executive order is less stable and secure than one resting on the mandate of the civil service law. Examination hardly confirms this view. Even were the positions under discussion to be brought, through the abolition of senatorial confirmation, within the scope of the civil service law, the determination of the method of their selection (including the question of whether competition or examination should be employed) rests wholly in the hands of the President. The only qualification is that if examination is provided it must be carried on under the supervision of the civil service commission. This requirement is indeed something of an objection to the classification of the higher administrative offices under the civil service law; for it is more than doubtful whether examination under the supervision of the civil service commission would be the best system of selection for those offices, so far as they were not filled by promotion. Time does not permit a discussion of various alternative methods of selection, some of ~~them~~ hardly yet tried, which might be applied to the higher administrative posts.

The problem of selection for these posts is, of course, immensely simplified if they are filled by promotion from within the service, rather than by selection from outside; and in a healthy personnel system promotion will always be the normal method of filling these posts. It may be questioned, however, whether the time has yet come in the federal service, were all the higher posts put on a merit basis, where all could with certainty be filled as satisfactorily by promotion as by selection

from outside. That condition normally exists only where promotion to the top has long been the rule in the service, and has thrown back its influence even to the process of recruitment, resulting in the entrance of more capable men into the service to begin with, and their retention in the ranks of subordinates and minor executives until the time for major promotion arrives. In many branches of the federal service the opportunity for promotion has been so limited that the personnel most suitable for major promotion has never entered the service, or entering, has not remained. It is for these reasons that the rigid application of the wholly sound canon that all posts, even the highest, should be filled by promotion, is not practicable at the present time throughout the federal service.

With respect to the local officers, one further change is necessary. In some of the field services, there is no requirement or even tradition that the local chief shall be a resident of the state or district in which his duties lie. In most, there is no legal requirement, but there is a strong tradition. In a few, there is a statutory requirement. Thus a collector of internal revenue must be a resident of the collection district to which appointed.

The requirement of local residence, whether statutory or traditional, is, of course, closely associated with the treatment of local offices as spoils. It is not found in any of the newer and technical services in which the selection of local chiefs is wholly on a merit basis. It has obviously no relation to and no origin in the demands of efficient operation. It finds no counterpart in the industrial world. It is a survival of the political as opposed to the administrative tradition in the filling of administrative offices.

With the selection of the higher administrative officers solely on a merit basis, and the abolition of all fixed terms and residence requirements for local officers, the political factors which now complicate the problem of securing an efficient directing personnel will have been eliminated and the problem will become almost wholly, as is the problem of the subordinate personnel, a technical one—a problem of personal management.

The technical problem of personnel management presents two phases—what might be termed the substantive and the adjective. What are the working conditions, in terms of compensation, opportunity for advancement, social esteem, and attractiveness of work, that the service offers? This question is basic, and unless it is satisfactorily answered, no amount of administrative machinery can save the personnel system from failure. Once it is answered, the question arises as to the machinery and procedure to be employed for applying in detail the principles thus defined. Here are presented questions which, if less basic than the other, are more difficult of satisfactory solution. The limitations of this paper will not, of course, permit even the mere statement of the problems—even the major problems—which arise under each of these heads. A brief indication of two or three of the larger aspects is all that can be attempted.

Before entering upon a consideration of the specific problems affecting the subordinate personnel of the government, it will perhaps be as well to call attention to the grossly exaggerated importance which is attached, in current popular thought, to the case of the government clerk, and more particularly of the government clerk at Washington. Unfortunately, there are available no recent figures that will indicate with precision the proportion and distribution of clerical employees in the service. Figures bearing on this point were compiled in 1907, and while the federal service has enormously expanded since then, it is safe to assume that there has not been any substantial change in the relative proportions and distribution of the various classes of employees, clerical, mechanical, labor, professional, etc. The 1907 figures show that, if the postal service, which is of course in a class by itself, be excluded, the clerical employees of the government number less than 20 per cent of the whole, being outnumbered by the mechanical employees, who comprise some 28 per cent, and being less than half as numerous as the sub-clerical (that is, messengers, watchmen, etc.) and labor employees, and less than twice as numerous as the professional, technical, and scientific employees. It is true that the figures from which these percentages are derived embrace the war and

navy departments, with their arsenals and navy yards employing the greater proportion of the mechanical employees above noted as comprising 28 per cent of the whole. Even if these two departments be excluded from consideration, however, the clerical employees will be found in the 1907 figures to be considerably under 25 per cent of the whole, with the professional employees about 13 per cent, mechanical employees about 7 per cent, and the subclerical and labor employees over 45 per cent. No thought regarding personnel problems is of value which concentrates itself too exclusively upon the problems of the clerk, and omits from consideration the large and more rapidly growing class of professional, technical and scientific employees, the enormous mechanical and labor forces, and such miscellaneous employees as are found in the coast guard, in the hospitals of the public health service, on the irrigation projects, on the Indian reservations, in the lighthouses, and so forth.

In the basic matter of adequate compensation, the cardinal difficulty has been the apparent tendency of Congress, inherited from the days of the spoils system, to regard the federal employee as a feeder at the public crib—entitled to no sympathy to begin with, and still less when selected by procedures in which congressmen have no participation. This tendency has fortunately weakened in recent years. A second factor is the helpless position in which the average employee finds himself after some years of service. Frequently he has no alternative but to remain in the service, though grossly underpaid when judged by any fair standard. Since entrance rates have generally been sufficiently high, and in some cases even generous, there has been little difficulty ordinarily in recruiting the service.

At bottom, however, the current situation, which is, as is notorious, characterized by absurdly low rates for the higher technical and supervisory posts (as illustrated by the fact that the engraver of the bureau of engraving and printing, whose salary is not fixed by Congress, receives a salary measurably higher than that fixed by law for the director of the bureau) is the result of the total failure of Congress for the last half century or more to make any attempt at a consistent, careful and

comprehensive determination of equitable compensation rates. Ignoring the repeated urgings of the civil service commission and the employees' organizations, and the plainest dictates of administrative practice, it has left the determination of rates wholly in the hands of the several appropriation committees, each interested only in particular appropriations and none of them having any especial interest in the general problem of the federal personnel. Indeed, in neither house of Congress does there exist a committee charged with responsibility for the advancement of a comprehensive and progressive personnel program for the administrative branch of the government.

The creation, by the act of March 1, 1919, of a joint commission on reclassification of salaries (applying only to the departments at Washington) and the creation, by act of February 28, 1919, of a similar commission for the postal service give promise that a new order is beginning. Both these commissions are limited by the terms of the acts creating them to an investigation of compensation rates only, but it is probable that both will, in their reports, emphasize the need of the development of a program embracing all phases of personnel administration.<sup>2</sup> With reference particularly to compensation, experience seems to demonstrate that not until there has been established an administrative agency, specially charged with continuous current supervision and control over matters of compensation rates, can the fundamental and permanent rectification of existing conditions be expected. The personnel of Congress, the nature of its committee system, and the procedure of the several committees themselves, all militate against any consistent or well-worked-out personnel program, particularly in respect to matters of compensation.

Closely related to the problem of adequacy of compensation, but entirely distinct from it, is the matter of uniformity of

<sup>2</sup> Since this paper was written the joint commission on the reclassification of salaries has rendered its report (March 12, 1920, H. Doc. 686, 66th Congress, second session). As expected, the commission recommends not merely a complete revision of salary rates, but the formulation of a comprehensive personnel policy and the creation of a central personnel agency with adequate powers.

compensation. Compensation may, generally speaking, be adequate throughout the service, and yet there may exist a large number of specific inequalities of compensation for the same or similar classes or grades of work. Such inequalities exert a depressing influence upon the morale of the personnel far in excess of their mere number or the seriousness of the injustice actually worked by them. In view of what has been said of the method by which the present compensation rates in the federal service have been developed, it need hardly be stated that flagrant inequalities in compensation are found throughout the federal service, and more particularly in the clerical and technical services at Washington, where the nature of the duties does not lend itself so readily to obvious classification as in the case of most of the field services. The work of the joint commission on reclassification of salaries will, of course, include also an attempt to rectify these inequalities, though the problem is one of extreme difficulty because of the adverse effect upon numbers of employees of long standing that such a program necessarily involves if rigidly adhered to; while, if exceptions to the general scales arrived at are permitted to any great extent, the entire work is, of course, jeopardized. The consistent solution of this phase of the problem can be effected only by a permanent administrative agency exercising current control. With such an agency in operation a substantially complete rectification of existing conditions could probably be accomplished in less than a decade.

Opportunity for advancement ranks, of course, with adequacy of compensation as a major factor in determining the attractiveness of the service. Obviously, the opportunity for advancement in the federal service would be substantially enlarged, and in a most attractive way, were the higher supervisory posts placed upon a merit basis, as urged in preceding paragraphs; for, even from the first, and increasingly as the system established itself, those posts would normally be filled by promotion from within the service. It is, however, easy to exaggerate the importance of this factor in enlarging the opportunity for advancement, and such exaggeration is quite common in discussions having for their theme the development of the federal service

as a career. The possibility of reaching the very highest posts is undoubtedly of high value in its effect upon the morale of the most ambitious and able members of the service. But on a cold calculation of probabilities it is, of course, relatively immaterial to the average postal employee, for example, whether he may or may not be eligible to a post of assistant postmaster-general; and even in the post office of a large city it is at best of but secondary importance to the average postal employee whether the line of promotion open to him runs, as now, to the rank of assistant postmaster, or whether it embraces also that of postmaster. This much is said merely by way of counterweight to the emphasis which discussions of the question commonly place on the other side. There is no disposition to minimize the extreme desirability from every standpoint of placing the positions referred to on a merit basis with promotion from within the service as the accepted method of selection.

There are other factors affecting the degree of opportunity for advancement which are not so well recognized, but which, from the standpoint of the run of employees, are probably of greater importance. Space forbids more than a mere mention of these. The extent to which the higher positions in one branch of the service are filled by promotion from another branch (rather than by selection from outside the service), when there is no suitable personnel available in the same branch, is one of the most important of these factors. Similar to, but clearly distinguishable from this factor is the extent to which transfer is permitted from one local office to another within the same branch of the service. Still another factor is the procedure in force for retiring superannuated personnel; if such retirement be prompt and universal, the opportunities for the younger personnel are obviously greatly enlarged; the rate of advancement, not merely to the positions formerly occupied by the retiring employees, but throughout the service, is immensely accelerated. Finally, opportunity for advancement within the service depends, in a measure, upon the opportunity which exists for entering employment outside the service. The greater the extent of such opportunity, and the more frequently availed of, the more numerous will, of



course, be the resignations in the higher ranks, creating opportunities for advancement for those below. From this standpoint the resignation of employees in the federal service to enter other fields, if kept within reasonable limits, and if not confined to the ablest men of the service, is by no means an unmixed evil.

In considering the problem of how the opportunity for advancement in the federal service may be enlarged, the fact must never be lost sight of that there are serious natural limitations to what may be done in this direction. Discussions of this subject frequently seem to run on the implicit premise that the opportunity for advancement may be almost indefinitely enlarged by proper administrative policies and methods. It needs but slight examination, however, of the actual work processes involved in the functions of the several federal services to compel an appreciation of the fact that the quantity of routine, specialized, regimented operations required is so vastly in excess of the creative, executive or other individual activities, that for the great mass of federal employees, as for the great mass of industrial workers, there can be no prospect of even ultimate ascent to posts of even intermediate responsibility and importance. For the great mass a long future in the federal service cannot, in the nature of the case, offer anything worthy to be called a career. The best that it can hope to offer is security, adequate, and, within fairly narrow limits, increasing, compensation, and the sense of useful work faithfully done.

In this view one solution of the problem would seem to lie in encouraging, rather than discouraging, a point of view which looks at the routine employments of the federal service as a temporary episode in occupational history. There are some attractive possibilities in what might be done were this view officially adopted and the employment program for those parts of the service affected consistently worked out in accordance with it. The rapid growth of the employment of women in the routine work of the government, greatly accelerated by the war, is indeed by way of bringing this condition to pass over a large area of the service, regardless of theory; as despite numerous exceptions, and despite the growing tendency of married women

to seek employment, substantially the larger part of the young women employees added to the government forces in recent years do not look upon it as a permanent employment.

Despite the emphasis laid above on the natural limitations which exist in the matter of providing opportunity for advancement for the run of employees, it cannot be too strongly insisted upon that within those limitations the rate of advancement is very largely determined by the administrative policies and practices adopted with respect to the factors affecting opportunity which were enumerated. For the failure to adopt or make provision for such policies and practices, the primary responsibility must again rest upon Congress. Its flagrant failure to provide a retirement system for superannuated employees is a matter of common notoriety. Similarly, wherever it has by legislation attempted to regulate matters of transfer, salary increase and other factors affecting promotion, it has almost invariably enacted provisions dictated by the cheese-paring economy of appropriation committees, rather than by any broad-gauged view of the needs of the personnel system. A measure of responsibility must fall also upon the civil service commission. It has unquestionably failed to realize the full opportunity, presented to it in the exercise of its power to regulate the methods of filling positions, to work out such lines of promotion and such plans for preference, in the filling of newly created positions, to employees already in the federal service, as would substantially have enlarged the opportunities for advancement in a great number of cases.

Not only, however, have opportunities for advancement in the service been far less numerous and varied than could have been produced by wiser legislation and administration, but even so far as they have existed, the system of advancement has been in many of the services highly unsatisfactory. The lines of promotion have not been defined so that the employee might enter with a fair degree of assurance as to what the opportunities before him were. In the actual selection and designation of employees for promotion there have been inadequate safeguards against favoritism and arbitrary action. With insignificant

exceptions the civil service commission may be said to have ignored the potential control over the promotional procedure awarded it by the civil service rules. Without attempting here to go into the difficult question of how far and in what way the civil service commission might usefully attempt to exercise a control of this character, it should be emphasized that in the development of a well-defined and well-administered promotional system lies one of the major problems of the federal personnel system which has as yet received but scant attention.

Aside from adequacy of compensation and opportunity for advancement, the chief factor in determining the attractiveness of the service is doubtless the social esteem which attaches to it. This is, of course, in a measure the product of the other conditions referred to; but it depends also on additional factors, perhaps the chief of which is the prevailing estimate of the efficiency with which the work of the government is accomplished. The operations of the government are so multifarious, and the degree of efficiency prevailing in one branch of the service or another will inevitably be so unequal that no current estimate on this head can be at all accurate. But a general estimate does and will exist, and it must be the study of those who seek to improve the status of the federal personnel to see that this estimate is as favorable as possible. Needless to say, the most patent factor in this direction will be the actual improvement and intensification in the efficiency of the government's work. The problem of personnel is, of course, but a part of the general problem of securing greater efficiency in the administration of the government; but from this standpoint the positions of the two problems are reversed, and the general problem of efficiency in the federal government may be regarded as a phase of the problem of securing and retaining an efficient personnel. The promotion of all measures looking to a fundamental improvement in the business methods of the government, particularly the adoption of a budget system and the revision of the administrative structure of the government, thus becomes an essential item in a comprehensive personnel program.

It is to be questioned, however, whether any merely administrative arrangement can suffice to raise and maintain the management of the federal business at a level of efficiency as high as that which is secured in the general run of large industrial organizations by the imperative necessity of making profits and the incentive which the management has to make them as large as possible. For a substantial proportion of the federal personnel, both directing and subordinate, no such necessity or incentive is required—the instinct of workmanship is of itself sufficient to stimulate the best and most conscientious efforts. It cannot be denied, however, by one familiar with conditions in the federal service that over large areas of the service such idealistic incentives are hardly existent. Everyone who studies the federal personnel problem with any attention is thus brought to speculate whether it would not be possible to introduce at least over large branches of the service an incentive to productivity in the shape of piece work and bonus systems of payment, and in some establishments, as perhaps in the post offices and arsenals, in the shape of a system of periodic rewards for general service efficiency, corresponding to the dividends of profit-sharing industrial concerns. This is as yet virgin soil, but in it may yet be found and developed devices and methods which may go far towards solving some of the problems of federal employment and of public employment generally.

Such are the main problems which must be worked out if the development of the federal personnel system is to keep pace, or indeed even to catch up with, the enormous development in administrative responsibility and operations which the federal government is experiencing. How is this development to be effected? Nothing can be clearer from the history of the federal personnel administration than the utter incompetency of Congress, by ordinary current legislative methods, to achieve a satisfactory solution of these problems and to effect the innumerable current adjustments and accommodations which are involved. Only an administrative agency, continuously and exclusively occupied with the problem of personnel and vested

with powers adequate to its responsibilities, can in any degree meet the needs of the situation. The last is of the first importance. Congress has not hesitated to vest in the hands of an administrative commission complete control over railway rates and practices, but with characteristic perversity it has jealously guarded in its own hands a control over the many minutiae of federal employment conditions. The willingness of Congress to devolve large powers over the control of personnel upon a properly qualified administrative agency is the *sine qua non* of a proper development of the personnel system.

Historically, the civil service commission has been an agency set up over against the operating departments to check the unregulated discretion of the appointing officers, particularly in respect to appointments, and to investigate and cause to be punished all infractions of the law and rules designed to prohibit political activity by, or the solicitation of political contributions from, employees. Both these functions must continue to be exercised, but far from being the sole functions of the commission, they should be subordinated to its constructive functions. More and more the commission has come to demonstrate its value, even to the best intentioned and most zealous of administrative officers, as a recruiting agency of an efficiency far surpassing that which could be attained by the several departments and services themselves. It must now demonstrate equal service ability in assisting the departments in making promotions, in finding suitable men in other departments to be transferred to vacancies, in enlarging the opportunities for promotion in the departments, and in assisting the departments in the development of helpful methods of personnel management generally.

Successfully to accomplish these functions the present organization of the commission, in which the commissioners are appointed by the President and are entirely cut off from and set over against the departments, must give way to an arrangement in which the several department heads and service heads secure a large measure of representation and have a voice, and doubtless, too, a vote, in the formulation of the large personnel poli-

cies of the government. Hardly less essential to the solution of the major problems with which such an enlarged and representative agency would be confronted is the provision of adequate representation for the employees themselves. As is well known, the organization of the federal employees into unions has proceeded apace in recent years, and if present tendencies persist, it will be a matter of only a few years when the federal service will be substantially unionized. Without exception these unions disclaim, and with all sincerity, any intention to employ the strike method. They are thus remitted to the employment, on the one hand, of persuasion (including an appeal to public opinion, and to the fairness of Congress and the chief executives of the government), and, on the other hand, to alliance with the organized labor movement with a view to securing their coöperation in electing congressmen who will favor the cause of the federal employee in Congress, or, what is much more frequent, in defeating those who have earned the hostility of the employees. Such a development has already manifested itself in several cases, and time is not distant when a congressman coming from a district where organized labor is a factor will oppose the wishes of the employees' unions at his peril.

One may possess a full sympathy with the condition in which the federal employees find themselves and with their attempts to improve their condition by organization, and yet see in this a development undesirable from every standpoint. The problems involved are, for the most part, administrative and not legislative, and should have never come within the province of a congressman to begin with. They should come before a body so constituted as to be impervious to political considerations, and enjoying the confidence of the public, the employees and the executive officers.

But a central agency alone, however representative and powerful, must always be inadequate to solve the never-ending stream of problems which issues from the administration of so large and diversified a personnel system as that of the government. The central agency must rest upon a wide base of personnel officers and boards, constructed on similar and harmonious

principles, in the several departments, bureaus and field establishments. Hitherto, with negligible exceptions, personnel administration in the federal service has been regarded as a mere incident of operating administration. It must come to be recognized throughout the service, even down to its minor divisions, as a separate function, subservient to operation, in truth, but having its own distinct purposes and prerogatives. Until this condition is realized all improvement in legislation and in the organization of central personnel agencies will be little more than a gilding of the apex of the pyramid while the base remains in the shadows.

## POLITICAL GEOGRAPHY AND STATE GOVERNMENT

W. F. DODD

Little attention has been devoted in this country to political areas and their relationship to each other. Not much is to be gained from a theoretical discussion of this subject, and this article is based upon a detailed study of conditions in Illinois. Similar problems present themselves in every state, although the details vary in different parts of the country, and the effort is made here to bring out the general issues involved, using the conditions in a single state as the basis for discussion.

Attention should at the outset be called to the fact that the situation is complicated by the fact that this state has but one great city. The position of Chicago and Cook County constitutes one of the serious political problems in connection with reorganization of state and local government.

### LEGISLATIVE AREAS

Areas for legislative and congressional representation demand first consideration in this discussion. Before 1870 there were in Illinois, as there are still in most of the states, two sets of districts for representation in the state legislative body. In the legislative apportionments in Illinois before 1848, the practice was generally observed of keeping the smaller districts for representatives within the limits of the larger state senatorial districts. That is, the apportionment schemes resulted in general in the avoidance of the crossing of lines as between the larger and smaller areas of state legislative representation. Under the apportionments of 1848, 1854 and 1861 in Illinois, no efforts were made to keep the smaller representative districts within the limits of the larger senatorial districts, and there were two series of districts substantially independent of each other in territorial area.



In order to develop a permanent political solidarity within representative areas, there is distinct value in having a single set of areas for representation in the two houses, and there is a distinct disadvantage in having the areas for one house cross the lines for the areas of the other house. Such a crossing of lines creates confusion in party organization, and also makes it much more difficult for the independent voters to organize themselves with respect to legislative representation and to know the basis of their representation in the two houses.

In Illinois since 1870 the cumulative system of voting has existed, and there has been but one series of representative areas—the senatorial districts. From each senatorial district three representatives are elected at large under a system of cumulative voting. It is, of course, not necessary that cumulative voting exist in order to use but one series of areas for representative purposes. In North Dakota the members of the house of representatives are apportioned to, and elected at large from, each senatorial district. Of course, the use of the senatorial district for the election of representatives at large involves the apportionment to a senatorial district of several representatives, so long as the lower house of the state legislature is composed of a materially larger number than the upper house.

Even if there are to be two sets of state representative areas, it is relatively easy, however, to avoid the crossing of lines of such areas, and to prevent the confusion which results from such crossing of lines. If the senatorial areas are based upon population there is no difficulty about dividing each senatorial area into the number of representative districts to which its population might entitle it, although even such a plan involves a relationship between the members of the state house and senate such that the larger number is divisible by the smaller. In Minnesota the constitution provides that "no representative district shall be divided in the formation of a senate district," and the New York constitution provides that each assembly district "shall be wholly within a senate district."

These statements are, of course, based upon the assumption that representation in state legislatures is to be based upon

population. It is, of course, true that representation in many states is now largely based upon state governmental areas rather than upon population, and that in substantially all of the states where population is taken as a basis, county lines are to be observed in the apportionment of senators and representatives except in the cases where a county is entitled to more than one senator. In connection with the representation in state legislatures, it should also be borne in mind that each state is divided into districts for the election of members to the national house of representatives.

Illinois is now divided into fifty-one state senatorial districts, and these fifty-one districts constitute the areas for the election of the members to the state house of representatives. The state is now also divided into twenty-five congressional districts, and if a congressional reapportionment had taken place the state would have been divided into twenty-seven districts upon the basis of the census of 1910. In congressional apportionments there is no requirement that county lines be observed, even when it is possible to observe them, and as a matter of fact in Illinois county lines are in some cases not followed with respect to congressional districts even where this may have been possible. With the smaller number of members in Congress, the presence of one county of large population adds to the difficulty of adhering to county lines.

With respect to representative areas, the situation in Illinois is less complex than that in most other states. There are merely two sets of districts, the senatorial for state representative purposes, and congressional districts for national representative purposes. There is no definite relationship, however, between these two sets of areas, and such a relationship would be difficult to work out, in view of the fact that there is no definite and permanent relationship between the numbers of the two sets of districts, although it might be possible to work out more of a relationship than that now existing. No state has sought to base its representation for state legislative purposes upon congressional apportionments, and taking congressional districts as a basis for senatorial representation in Illinois would probably

result in the establishment of districts regarded as too large for state representative purposes. Of course, it would be possible to reach much the same result as that now existing in Illinois by adopting the rule that each congressional district should be divided into two senatorial districts. Such a plan, if it continued the present Illinois system by which the two houses are chosen from the same representative districts, would, of course, involve a gradual increase in the membership of both houses, that is, if the population of Illinois continues to increase as it has done in the past.

The plan of decennial apportionments of members to the national house of representatives has almost necessarily resulted in a decennial increase in the number of members of that body. This increase has been forced as a political expedient because of the fact that no state desires to lose membership in the house of representatives, such loss of membership involving the apportionment of the state into a smaller number of districts, and necessarily the loss of his seat by some one of the existing members of the house. To this purely political influence is added the sentiment upon the part of the state that it does not wish to go backward in representation, although, of course, it does go backward in proportion to the representation of states which are increasing in population or increasing more rapidly.

In Illinois there has been a settled constitutional practice of limiting the membership of the two houses of the general assembly. This limitation has not always been an absolute one, but by the constitution of 1870 the membership of the senate is explicitly limited to fifty-one, and the membership of the house of representatives to three times this number. Some definite limitation upon the membership of state legislative bodies is desirable, and the absence of limitation, together with a population basis for reapportionment, is almost certain to lead to steady increase in total membership. However, if state legislative representation were based upon congressional areas, the increase would be relatively slight and would be determined by considerations not controlled by the state legislative body itself.

Cook County is now the only county in Illinois having more than one senatorial district. Within Cook County there are two primary governmental areas, the wards within the city of Chicago, and the townships in the less thickly populated districts outside of the city. No effort has been made to take ward lines as a basis for the apportionment of senators within the city of Chicago, and it would be extremely difficult to use wards as a basis for senatorial apportionment, because there has been no recent reapportionment of wards within the city of Chicago and the representative system for the city council of that city is now distinctly unequal. Townships in Cook County outside of the city of Chicago vary so materially in population, that there is no opportunity for an effective use of them as units in the construction of congressional and senatorial districts. That is, under present conditions there is no possibility of preserving the individuality of local areas within Cook County as parts of larger state and national representative areas.

The division of governmental territory into election precincts has no bearing upon the problem here under discussion as such division is primarily based upon the number of voters within particular areas, modified to some extent by the convenience of polling places to the voters. Election precincts are, as a matter of necessity, always within county lines, and also within the ward lines of the city of Chicago.

#### JUDICIAL AREAS

Aside from the city courts which have been established in twenty-six cities, and the municipal court of Chicago, the county is the primary unit of judicial organization in Illinois. The jurisdictions of the city courts and of the municipal court of Chicago are confined to the limits of their respective cities. Justices of the peace are elected by local communities within the county, but their jurisdiction extends throughout the county. The jury and grand jury systems are based upon the county as a unit. The constitutional guaranty of jury trial has been interpreted to require that a jury be drawn from the county,

and so distinctly is this the case that it has been held improper to have a city court for a city which is partly within two counties, because of the confusion and difficulty that would result in the drawing of juries for such a court.<sup>1</sup> A state's attorney is elected for each county. By statute there is a county court for each county, and a probate court for each county with 70,000 or more inhabitants. The constitution provides that counties may be united for the establishment of county courts, but the statutory organization of county courts provides one for each county.

The constitution provides an alternative method for the organization of circuit courts. Under one plan, one judge was to be elected for each circuit, and circuits were not to exceed in number one for each 100,000 inhabitants. Under the other plan the general assembly was authorized to divide the state into circuits of greater population and territory, and to provide for the election therein, by general ticket, of not exceeding four judges. By statute, provision has been made for seventeen circuits outside of Cook County, three judges being elected at large from each circuit. Circuits are in all cases required to be "formed of contiguous counties, in as nearly compact form and as nearly equal as circumstances will permit, having due regard to business, territory and population."

Cook County forms a distinct judicial area with two courts (the circuit and the superior courts) constituted for the exercise of the jurisdiction elsewhere vested in the circuit court.

By the constitution the general assembly was authorized to create inferior appellate courts, such courts to be held by such number of judges of the circuit courts and at such times and places and in such manner as might be provided by law. In the exercise of its authority to create appellate courts, the general assembly has established four appellate districts, Cook County forming one of these appellate districts.

For the election of the seven judges of the supreme court the state was, by the constitution of 1870, divided into seven districts, and the general assembly was authorized to change the

<sup>1</sup> *People v. Rodenburg*, 254 Ill. 386 (1912).

boundaries of the districts "at the session of the general assembly next preceding the election for judges therein, and at no other time." Alterations, when made, were required to be upon the rule of equality of population as nearly as county boundaries would permit, and the districts were required to be composed of contiguous counties in as nearly compact form as circumstances would permit. Inasmuch as supreme court judges are not all elected at the same time, and in view of the further fact that the change of the boundaries of one district would necessarily involve changing the boundaries of some other district, the supreme court found it necessary to interpret the provision as to the time of changing supreme court districts so as to permit the alteration of one district to effect a change in other districts, even though such changes were not made immediately prior to the election of judges within all the districts whose boundaries were so changed. The constitution contains similar provisions regarding the change of judicial circuits, but the provisions have made no trouble because all circuit judges are elected at the same time.

In 1870, the state was divided into three grand divisions, in each of which the supreme court held sessions. This plan was continued by the constitution of 1870, but the general assembly was authorized to alter this arrangement, and by legislation of 1897 the grand divisions for the supreme court were abolished and all terms of the supreme court are now held at the state capital. The supreme court grand divisions have, however, been made the basis for the organization of the appellate court districts. The second appellate court district includes all the counties in the former northern grand division of the supreme court, except Cook County which is organized into a separate appellate district; and the third and fourth appellate court districts include the counties in the former southern and central grand divisions of the supreme court, respectively.

It will be noted that the constitution provides regarding supreme court districts that such districts shall be based upon the rule of equality of population as nearly as county boundaries will allow, and that the constitutional provisions regarding judicial circuits require that such circuits shall be formed of

contiguous counties. There is no requirement that appellate court districts shall be composed of counties as units, although such a result is accomplished by legislation, and, partly for political reasons, the supreme court grand divisions have been used as a basis for the appellate courts.

Although appellate courts are held by judges of the circuit courts, the circuits are not entirely within appellate court districts. The ninth, tenth and eleventh circuits are split, part of the counties of each being in the second district and part in the third. Similarly, the fourth circuit is split between the third and fourth appellate districts. The first appellate district is composed of Cook County, and the lines for this district are necessarily the same as the lines bounding the circuit court area. For the other three appellate court districts, however, there is a crossing of the lines of circuits, although under the constitution and statutes circuit judges are designated to hold the appellate court, and appeals to that court are in the main taken from the circuit courts.

As has already been suggested, the county is the primary unit of judicial organization. Counties form the units which make up the circuits, the appellate districts, and the supreme court election districts, although the lines of all of these larger areas cross each other. For the city courts and the municipal court of Chicago the city is the area of jurisdiction, but juries for these courts are drawn from areas bounded by county lines. The prosecuting machinery is organized on county lines, the jury system on county lines; and although justices of the peace are elected from smaller areas, each justice of the peace (except in Chicago), no matter in what part of a large county he may be, has a jurisdiction extending throughout the limits of the county.

#### LOCAL GOVERNMENT AREAS

There are three main types of local government districts in the state of Illinois: counties, townships and school districts. Each part of the state is at the same time in a county, a school township and a school district; and every part of the state is

also in a civil township or a road district. In addition, there are over a thousand cities, villages and incorporated towns; and also a considerable number of drainage, park, high school and other special districts. These districts for local government purposes overlap each other, and the result is a more complicated and confusing network of local areas and local authorities than in any other state.

There are one hundred and two counties. These counties vary widely in area and population. There are twenty-nine with less than 400 square miles (the minimum area specified by the constitution for new counties), and several with less than 200 square miles, while six are more than 1000 square miles in area. In population the counties range from 7000 to more than 2,500,000; fifty counties had less than 25,000, and 17 had more than 50,000 population in 1910.

The constitution contains a number of provisions regarding the creation of new counties, the change of county boundaries and the removal of county seats, and these provisions are supplemented by statutes regarding the same matters and with respect to union of counties. Since 1859 no new counties have been created and no counties have been united.

Under the constitution three types of county government are provided. The township system may be adopted by any county desiring to adopt it. The township system was first provided for by the constitution of 1848, and the provisions for this system were continued with some alteration in the constitution of 1870. Eighty-five counties have adopted the township system, and the county law provides for the government of these counties (except Cook County) by boards of supervisors elected by the towns at their meetings in April for terms of two years. The size of county boards ranges from five in Putnam to 53 in La Salle County. In eighteen counties there are thirty or more members. The number of members of the county board of supervisors depends, of course, upon the number of townships into which the county is organized. There are in the state 1430 civil townships with an average area of a little more than 35 square miles each.



For Cook County the constitution provides a board of fifteen commissioners, ten elected from the city of Chicago, and five from the towns outside of the city; by statute these commissioners are now elected for a four-year term and one member is elected as president of the board with special powers.

In counties which have not adopted the township system, the state constitution provides for "a board of county commissioners, consisting of three members elected at large, one each year," for three-year terms. There are seventeen counties which have not adopted the township system. For the counties which have not adopted the township system the constitution prescribes a rigid form of county government, which makes it necessary that county elections be held annually for county commissioners. The government of Cook County and of the counties not desiring to adopt the township system is rigid and cannot be altered without constitutional change.

The constitution does not prescribe definitely the form of township organization, but leaves this matter to the general assembly so that some possibility of flexible county organization exists in this respect, the court having said that "the whole *modus operandi* of township organization is committed to the legislature, the constitution prescribing no particular form or officers, and the legislature has the power to fix and limit the powers of the township officers and to modify them at will."<sup>2</sup> However, the constitution does prescribe the formalities for the adoption or the abolition of township government, and the supreme court has said that a statute giving the county board power to alter the boundaries of townships cannot be construed to permit the county board to consolidate townships, since this construction would allow the county board to consolidate all townships of the county, and result in making void the formalities prescribed in the constitution for the abolition of the township system.<sup>3</sup>

Reference has already been made to the number of cities, villages and incorporated towns exercising powers of local gov-

<sup>2</sup> *People v. Commissioners of Cook County*, 176 Ill. 576 (1898).

<sup>3</sup> *People v. Brayton*, 94 Ill. 341 (1880).

ernment. These communities in all cases occupy territory over which other areas exercise functions of local government, so that in no case is a city, village or incorporated town the only body for the exercise of purely local functions within its territory. The county is, in all cases, an area covering the same territory as cities, villages and incorporated towns, and is exercising distinct and independent local functions which are similar to those exercised by incorporated areas.

Within the areas of incorporated communities as well as in territory not incorporated, there is, as has already been noted, a series of park, drainage, sanitary, forest preserve, and other districts for the performance of certain specific functions. In 1917 provision was made for the establishment of local health districts, composed of two or more townships.

All parts of the state are overlapped by a complex series of local areas for the performance of different or similar functions of local government. Of course, certain areas of the state are organized into a more complex system of local areas than others. Cook County, with its more concentrated population, presents the most serious problems as to local government organization; but much the same type of problem presents itself in urban areas such as those in and around East St. Louis, and in territories where there are several urban communities in close proximity to each other, such as Rock Island and Moline, Champaign and Urbana, and La Salle and Peru.

Taking the various local districts as a group, there is an aggregate of 2557 public officers voted for in Cook County. Each male elector in Cook County is expected to vote for from 172 to 197 different officers in a brief number of years. At the November election in 1916, each male elector was called on to vote for 72 officials in Chicago, and in other parts of Cook County for 61 officials. For the state, including Cook County as well as other counties, the number of officials to be elected for each local governmental body at one time is not great, and as the elections for the different local districts are held at different times the total number of local officers to be voted for at one election is not large, but this result is secured by multiplying the num-

ber of elections. There are seven regular local elections each year in the spring months. In years when circuit or supreme court judges are to be elected, there are as many as eight elections within a five-month period. These are in addition to the general state primaries and elections in September and November every second year, and the presidential primaries every fourth year.

The complexity of local government in Illinois is increased by a mass of legislation which is general in form, and which ordinarily for this reason complies with the constitutional requirements, but which is in fact special. For Cook County and for Chicago special legislation is, under certain conditions, explicitly authorized. The statutes of Illinois also contain with respect to local government a large mass of optional legislation, and there is no central record or central knowledge in any one place as to what communities have or have not come under the terms of such laws. Of course, optional legislation is to a large extent employed as a means of avoiding constitutional limitations upon local and special legislation, and a law is frequently passed to meet the specific needs of only one community but is made generally optional in form.

Not only is there confusion because a large number of local areas overlap each other and perform different functions of local government, but with respect to the same function of local government there may be oftentimes a number of local areas with crossing lines and with powers almost identical as to the same matter. This situation presents itself particularly with respect to schools. A community consolidated school district may be organized in this state with all of the powers of other school districts under the laws of the state. A community high school district may be organized for the purpose of conducting a high school. Under the general laws of the state a community consolidated school district may conduct a high school, but it may be partly within the boundaries of a community high school district authorized to conduct a high school and to do nothing else. The supreme court has reached the conclusion that the two districts may not tax the same area for precisely the same purpose,

although both districts may have the power to do precisely the same thing. This presents a difficult and complex situation, probably more extreme than that presented by other overlapping areas of local government, but little different in fact. The supreme court has suggested in a recent case that where a high school district overlaps part of an ordinary school district neither will be held invalid, for the reason that the supreme court will assume that the ordinary school district will, as to any overlapping area, confine itself to the operation of elementary schools, while the high school district will confine itself to the operation of a high school. The court suggests that where the districts have conflicting powers which the two cannot exercise, a mutual arrangement will probably be reached by which conflict may be avoided.<sup>4</sup>

The practice in Illinois, as in other states, has to a large extent been that of creating a new local area whenever it was desired to provide for a new function of local government. The multiplication of local areas has reached such a point that it confuses the citizen, and no one of such areas ordinarily has a sufficient amount of work to be effective. The scattering of energy and the division of local government work into small separate parts constitute the worst features of local governmental organization in this country. Reference has already been made to the confusion of districts having to do with school matters in Illinois. The districts are small and there are numerous types of districts for different purposes, such districts often overlapping.

There is for the state as a whole no effective central record of all local areas; and no effective county record of all the areas within each county. With respect to drainage matters there are certain transactions which must be had before the county court, and the county collector is the final authority for the collection of delinquent special assessments, but except with respect to certain of these matters where the records of action are scattered among various county offices, there is no means of determining the location, areas, and other information regarding the different types of drainage districts.

<sup>4</sup> *People v. Woodward*, 285 Ill. 165 (1918).

There is no central record for the state as a whole of the financial or other transactions of the county and of all the other local areas within each county, nor for all of the local areas lying within any specific portion of the territory of the state. Not only is there no state record but there is no county record for each county which may be employed for the discovery of the local government situation in any particular county. Legislation of 1919, replacing an act of 1881, provides that "every public officer other than a state officer, who, by virtue of his office receives for disbursement and disburses public funds in discharge of governmental or municipal debts and liabilities, shall, at the expiration of each fiscal year, prepare a statement;" and further provides that such statement shall, within thirty days after the expiration of the fiscal year, be published once in a newspaper published in the town, district or municipality in which such public officer holds his office. This law lays down no conditions as to uniform statements, and does not aid in reducing the present confusion of local government. Each officer of the county or other local area who disburses public funds is required to make a separate statement, and may make this statement in any form in which he sees fit. Publication of such statements accomplishes little, other than making a payment necessary to the local newspaper.<sup>5</sup>

By statute the county clerks are made the authorities for the extension of all taxes for the respective towns, townships, districts and incorporated cities, towns and villages in their counties.<sup>6</sup> In the task of extending taxes, the so-called Juul law, first enacted in 1901 but frequently amended, provides for a scaling down of taxes so that they shall not exceed a certain aggregate rate for any portion of the county. Under the Juul law, as originally contemplated, all taxes would, as it were, be placed in a compress, an equal pressure reducing all taxes for a given area in the same proportion. Soon, however, interests which were strong enough began to secure statutory amendments which took certain taxes entirely out of this compress.

<sup>5</sup> *Session Laws*, 1919, p. 713.

<sup>6</sup> *Hurd's Revised Statutes*, ch. 120, secs. 123-127.

Other interests obtained legislation which places their taxes in the compress but provides that such taxes shall not be reduced, and still other interests have obtained legislation providing that their taxes shall not be scaled below a certain figure. The result is that a group of local taxes (but not all imposed within a particular local area) are placed in a compress; some of the taxes may, as a result of the operation of the compress, not be reduced at all, others may only be reduced to a certain amount, and a third group may be reduced as far as necessary to bring the aggregate down to a definite figure. The Juul law is not, and never was, a distinct element of unity in the operation of the different types of local government. It was merely a make-shift for the purpose of keeping the aggregate of local taxes within limits, and this purpose is now defeated by the large number of exceptions made in the terms of the law itself. At the present time the law serves primarily as a pitfall for unwary tax officers. Not even in the extension and levy of taxes is there anything of an effective unity.

With respect to the collection of delinquent taxes, the constitution by article 9, section 4, provides with respect to real estate that "a return of such unpaid taxes or assessments shall be made to some general officer of the county having authority to receive state and county taxes, and there shall be no sale of said property for any of said taxes or assessments but by said officer, upon order or judgment of some court of record." The actual result of this constitutional provision, however, is that a community having authority to levy special assessments makes collections so far as they can be made, and then the books must go to a county officer for further collection, with a duplication of tax books and of records with respect to the matter. The result of the constitutional provision regarding delinquent taxes, in so far as it has been carried out by legislation, is, therefore, to create a greater degree of confusion rather than to better the situation with respect to local areas.

Not only is there no unity of action among the numerous local governing bodies, but the fiscal years of such bodies begin at different times, so that if under the legislation of 1919, finan-

cial reports for each body were published, such reports would not be comparable, even if it be assumed that the average citizen could take the time to discover all of the local governing bodies which have jurisdiction over him and to find the statements of disbursements for each such body. For the board of county supervisors under the township system the fiscal year begins September 1, while other county officers begin their fiscal year on December 1. Most cities begin their fiscal year on May 1; but Chicago and some others begin on January 1. School accounts and records are based on the school year beginning July 1.

Since the introduction of the township system there has been a distinct tendency for the township to become less important. The township system was rapidly adopted by counties in Illinois, but in recent years there has been little tendency to extend this system, although the alternative is the rigid commissioner system specified in the constitution. Two counties have adopted township organization since 1890. The smaller counties of the central and southern part of the state which have not adopted this system seem content with the alternative now provided by the constitution.

In the counties which have adopted the township system the township has become relatively less important, although this statement should not be interpreted into an assumption that the township has ever been an area of distinct importance. Little attention is paid to the town meeting. Town taxes, other than those with respect to roads, are relatively slight. In 1917 the township collector was abolished except for counties of a population of over 100,000. A single township highway commissioner was, in 1917, substituted for a group of three highway commissioners. By legislation of 1877 an effort was made to simplify government in cities by providing that a city may be separately organized as a town, the city government taking over the ordinary functions of the town government.<sup>7</sup> By an optional act of 1901 (adopted by Chicago and Springfield) the powers of townships and town officers in townships lying wholly within

<sup>7</sup> *Ibid.*, ch. 139, sec. 136.

any city of more than 50,000 inhabitants may be exercised by county officers.<sup>8</sup>

The main differences between counties under the township system and counties not under the township system are in the offices of supervisor and assessor and in county boards. The abolition of town assessors has been strongly urged for many years. If this were done and a small county board established in place of the board of supervisors there would be almost nothing left of town government. As has already been suggested, in some counties under the township system the county board of supervisors has become a cumbersome and ineffective governing body.

Two developments of recent years may be noted as important. One is the tendency to make the county the more important area for local administration in such matters as poor relief, highways, and the assessment and collection of taxes. The concentration of greater powers into the hands of the county as to taxation came in 1898, and as to highways in 1913. With respect to poor relief and charities there has been a steady development toward the use of the county, and by legislation of 1917 counties were authorized to unite in the administration of poor farms. This union was made necessary because of the fact that small counties were often unable to handle poor relief satisfactorily. The chief purpose aimed at in the transfer of functions from the township to the county has been to use a larger unit with more work to be done, and generally the result of consolidating work into the larger unit has been more efficient governmental work.

The other tendency has been that toward a very decided increase in the importance of cities, villages and incorporated towns. Before 1870, cities, villages and incorporated towns were in the main organized by special laws, and such special laws were enacted in great numbers, although many of the communities incorporated had small populations. With the constitution of 1870 special legislation of the old type became impossible, and cities and villages to a large extent reincorpo-

<sup>8</sup> *Ibid.*, ch. 24, sec. 643.



rated under the general cities and villages act, in order to obtain wider powers conferred by that act. In addition, between 1870 and 1917 there were 763 new cities and villages incorporated, making in that year a total of 1098 incorporated cities and villages. To these must be added the small group of 24 cities, villages and incorporated towns still operating under special charters enacted before 1870. Not only has there been a great increase in the number of incorporated communities, but there has been an equally great increase in the importance of the activities they have undertaken, so that although there are usually a number of other local governmental areas covering the territory of each incorporated community, the incorporated city or village is now the most important local governmental area within the territory which it occupies.

Another tendency in recent years which should be noted is that toward the multiplication of special districts for the performance of specific new functions of local government, with the creation of a new area for each new function of local government.

#### CONSTITUTIONAL BASIS FOR PRESENT GOVERNMENTAL AREAS

To what extent is the present complex system of governmental areas in Illinois required by the constitution of the state? So far as the legislative department is concerned, attention has already been called to the fact that areas for state representation are simple, there being but one set of districts for both senators and representatives; and it is possible to keep a single set of districts even though the cumulative system is abolished. However, if it is intended to adopt a different basis of representation in the two houses for different parts of the state, and to give a representation to areas rather than to population upon a different basis in the two houses, or to represent areas in one house and population in the other, a single set of representative areas becomes substantially impossible. As has already been suggested, even though two sets of areas should be adopted, it is still possible to prevent smaller areas from cutting across the boundaries of the larger areas. It is, of course, impossible under

the present constitution of Illinois to utilize for state legislative representation the same areas as those employed for representation in the national house of representatives.

So far as state judicial areas are concerned it should be repeated that the county is the primary judicial unit; and that the counties serve as units to make up the circuits, and the districts for the election of justices of the supreme court. So far as the appellate courts are concerned there are no constitutional requirements, but political expediency has caused previously existing judicial areas to be employed, and the counties also form the units of these areas. By the terms of the constitution, county boundaries must be respected in the rearrangement of circuits and of supreme court election districts, and supreme court election districts are so hedged about as to the time they may be changed that this has discouraged much effort to readjust them in proportion to changing population; although the failure to readjust the supreme court election districts has been primarily due to political considerations. It may also be suggested that the constitutional provision that county boundaries shall be respected in the readjustment of supreme court election districts may be interpreted to make it impossible under the present constitution to give Cook County two out of the seven justices, although Cook County had, by the census of 1910, three-sevenths of the population of the state. As has been noted, appellate court districts now cut across the lines of judicial circuits, but a readjustment of this matter is, by the terms of the constitution, entirely within the control of the general assembly. The constitution itself permits one specific departure from the general policy of making the county the primary unit in judicial areas, by permitting the consolidation of counties in the establishment of county courts, but such an alternative is hardly likely to be taken advantage of, for there is a distinct political desire to have the office of county judge within each county.

So far as local governmental areas are concerned, the terms of the Illinois constitution of 1870 have a decisive influence. When the constitution of 1870 was framed, the state had already

been divided into 102 counties with their present areas. The constitution lays down definite restrictions upon county readjustments, prescribing that no county shall be formed of less than 400 square miles, nor reduced below 400 square miles, and that no county line shall pass within less than ten miles of any county seat of the county or counties proposed to be divided. No territory may be stricken from any county unless a majority of the voters living in such territory petition for such division; and no territory may be stricken from or added to any county without the consent of the majority of the voters of the county from which the territory is to be stricken and to which the territory is to be added. These constitutional provisions make it fairly certain that the counties will remain as they have remained since 1870 without change in the boundaries established before the adoption of the present constitution; and there is probably little possibility of changing the present constitutional provisions unless, perhaps, with respect to issues of consolidation presented by Cook County and the city of Chicago.

Not only are the areas of counties substantially fixed by the state constitution but the types of government are definitely prescribed. As has already been noted three systems of county government are prescribed by the constitution of 1870, one for Cook County and two others, counties having an option as to which of the latter two—the township system and a rigid system of county commissioner form of government—they shall adopt. The Cook County system is definitely prescribed, and for all of the counties there is a definite constitutional enumeration of county officers. The number of officers as enumerated is too large for small counties, but there is no flexibility with respect to this matter. The work to be done by each county officer in a small county is not great, and his salary must be correspondingly small or the financial burden becomes too great. As to the general system of county government, the only element of flexibility is the option of counties between the township system and the county commissioner system, and the further general power of the legislative bodies to determine the form of the township system. There are no constitutional restrictions upon the general assembly as to the character of township organization.

The financial provisions of the constitution were probably not intended, in 1870, to have a definite influence upon the development of new areas of local government, but these provisions have had such an influence. With respect to taxation several matters present themselves as influential in leading to a multiplication of areas and an intense complexity of local government. Article 9, section 9 of the constitution requires that municipal taxes "shall be uniform in respect to persons and property within the jurisdiction of the body imposing the same." This makes it necessary that a new district be created if a new function is to be exercised within certain limits of area not already established as the limits of some other governing body. It is out of the question under any safeguards for a local governing area to levy a tax within merely a part of its territory, unless such tax be a special assessment or a special tax upon contiguous property in payment for local improvements.

Another difficulty presents itself in that the county tax rate is definitely limited by the constitution, and if this rate is insufficient to cover certain expenditures for which the county might otherwise be a proper area, the only alternative, if the function is to be performed, is that of vesting such functions in other existing local areas whose taxing rates are not constitutionally limited, or the creation of new local areas for the performance of the functions. This limitation now prevents the use of the county as the local area for road taxes.

To some extent political considerations also present themselves with respect to the multiplication of local areas with distinct taxing rates. If all areas of local government were united into one with a single large tax rate, it might be more difficult politically to justify such a rate, or an increase in the rate once established, than it now is to obtain increases in numerous separate and independent rates. With the separate and independent rates the increase of each will oftentimes not be detected by the taxpayer until all the rates come to be combined for purposes of collection, and then protest or opposition comes too late. A number of separate taxing areas is sometimes of importance for the purpose of dividing up expenditures for a partic-

ular purpose so that the total of such expenditures cannot easily be ascertained. Of course, where the same purpose is to be accomplished, as that with respect to taxation in overlapping areas with slightly different powers or with substantially the same powers, the existence of such overlapping and duplicating areas may sometimes serve as a means of obtaining without additional legislation new revenue for the general purposes to be accomplished when new or additional expenditures become necessary.

The powers of special assessment and special taxation are limited by the constitution to certain specific areas of local government. Section 9 of article 9 of the constitution authorizes the general assembly to "vest the corporate authorities of cities, towns and villages with power to make local improvements by special assessment or by special taxation of contiguous property, or otherwise." This provision was held by the supreme court to prevent the levy of special assessments by other corporate bodies than cities, towns and villages, and a constitutional amendment was adopted in 1878 expressly authorizing drainage districts to employ special assessments for the construction and maintenance of levees, drains and ditches. There is now some doubt as to the constitutional power of drainage districts to levy general taxes. The supreme court has by interpretation extended the power to levy special assessments to park districts. It may be that special districts are necessary for drainage purposes, and that other existing districts cannot be effectively employed for this purpose. Drainage districts are authorized to levy special assessments for the construction and maintenance of improvements, whereas the special assessment powers of other communities are by judicial construction limited so as not to apply to the maintenance of improvements. So long as powers of special assessment are not granted to all local governing areas, and are granted in a more extended manner to drainage districts, separate drainage districts will probably be necessary.

With respect to special assessments, attention should be called to the fact that by construction the supreme court of Illinois

limits the term "local improvements" to improvements undertaken by one municipal corporation, so that two adjacent municipal corporations may not by special assessment undertake a single plan of improvement.

The constitutional limitation upon municipal debts has probably had the most influence in the multiplication of areas of local government. This constitutional provision says that: "No county, city, township, school district or other municipal corporation shall be allowed to become indebted in any manner or for any purpose to an amount including existing indebtedness in the aggregate exceeding five per centum of the value of the taxable property therein, to be ascertained by the last assessment for state and county taxes previous to the incurring of such indebtedness." The supreme court of Illinois has definitely said that this constitutional prohibition in no way prevents the creation of new local areas with new functions, although the territory of such new areas may lie entirely within the territory of existing governmental bodies which have already incurred an indebtedness in excess of five per cent of the value of the taxable property therein. In the language of the court: "The constitutional limitation upon the extent of corporate indebtedness applies to each municipal corporation singly, and where one corporation embraces, in part, the same territory as others, each may contract corporate indebtedness up to the constitutional limitation without reference to the indebtedness of any other corporation embraced wholly or in part within its territory."<sup>9</sup> If existing local governing bodies have incurred indebtedness up to the constitutional limit, all that need be done in order to obtain money for a new function is to obtain authority from the general assembly to establish a new type of local area, and to start such local area upon its career with an entirely new debt limit. However, the supreme court has seen fit to draw a line when an effort was made to divide into two groups the powers of an existing local area, and to set up a new debt limit for precisely the same territory.

<sup>9</sup> *People v. Honeywell*, 258 Ill. 319 (1913).

South Carolina has sought to prevent the type of difficulty which has presented itself in Illinois by prescribing a limit upon the debt of each municipality, and by making the further provision that where there are two or more municipal corporations covering the same territory "the aggregate indebtedness over and upon any territory of this state shall not exceed fifteen per cent of all taxable property in such territory."

What has been said above is sufficient to indicate that a large part of the difficulty with respect to existing local areas in Illinois is directly traceable to constitutional provisions, although the situation is in large part due to a haphazard development of legislation. A good part of the present situation cannot be remedied without constitutional change, but much of it can be altered merely by legislation.

#### POLITICAL CONSIDERATIONS AND GOVERNMENTAL AREAS

The problem here under discussion is a distinctly political one, with close relationship to problems of party organization, and cannot be solved satisfactorily without consideration of political motives.

The present situation in Illinois is a bad one. There is no relation between senatorial and congressional districts, though with respect to state representative areas, Illinois has less complexity than most other states. There is no relation between the circuit and appellate districts, or between these districts and the supreme court election districts, and no relation between judicial and representative areas. There is a whole series of areas for local governmental purposes with substantially no relationship among them, and there is little or no relation between the areas for local government and areas for legislative and judicial purposes. It should be borne in mind, however, that the county is a unit which runs through all of the areas, whether such areas relate to local government or to judicial and legislative purposes. The county has come to be the principal unit of local government also, although within cities and villages the city or village government is frequently much more important than the county government. The county may properly

be said to be the one area which gives an element of unity to the political geography of the state.

The present county areas were established fairly early in the history of the state, and there has been no change in counties since 1859. Present county areas are practically guaranteed by the constitution and changes are not apt to take place. In the early history of the state, counties of small population were established in the southern territory, which was first settled, and in the southern area and also in other parts of the states there are many counties which cannot be expected to have a large population. Counties vary greatly in area and in population, and a rigid system of county government (with a detailed enumeration of county officers) cannot be properly applicable to counties which range from 7000 inhabitants to 3,000,000. In connection with the question as to whether time is likely to diminish the present discrepancies in population of the several counties, attention should be called to the fact that twenty-four counties actually decreased in population in the twenty year period between 1890 and 1910.

The first generation of statehood in Illinois by its organization of counties fixed to a great extent the permanent political basis of local government for the state, and this basis was determined in part by the more difficult means of transportation in the earlier days. The influence of the early division of the state into counties is not that of a dead hand, for the counties have now become a definite part of the consciousness and sentiment of the people of the state. This is true, not merely of the counties of larger population, and probably not so true of counties of large and growing population as of the counties which have remained stationary or gone backward. It may be urged that the counties which are not progressing in population should to a large extent be disregarded in the planning of the political future, but even if this were admitted, these counties together have a political influence which can effectively block action.

The counties are likely to remain the chief areas of local government and the chief units in other areas, and there is no present likelihood that they will become more nearly equal in



area or population. Something of value might be accomplished by a redivision of the state into counties more nearly comparable in population, although in the more sparsely settled parts of the state this would involve the creation of counties much too large for effective local government. On the other hand, there is much to be said in favor of preserving areas which have a historical background, and which have established themselves in the sentiment of the people rather than splitting the state into districts or counties on a purely utilitarian basis. Sentiment will unite with other influences to prevent the division of Cook County in furtherance of a plan to establish a more effective consolidated government for the city of Chicago; and it is likely that any consolidation, if effected, will take place within the limits of the existing county rather than by the carving off of a new county composed of purely urban territory.

In connection with the problem of a possible readjustment of county areas it should be borne in mind that the county is now the chief unit of party organization, and that political parties always look with suspicion on anything in the nature of a new deal. The county has been the unit of political party organization for a long period. Senatorial districts, congressional districts and judicial circuits are artificial areas which are subject to change or possible change at definite intervals, and for which new party organizations must be constructed upon the basis of county units.

It may be said that there is a direct antithesis between large and small areas for governmental purposes; or rather the antithesis may be said to be one between the more or less accidental county areas now existing and the plan of establishing a series of new areas for the purposes which are now largely met by the county as a unit. This antithesis has an important bearing upon the problems of proportional representation and of judicial specialization, for these matters involve larger districts than at present, except in so far as they may be worked out in larger metropolitan communities.

The county is and for a long period has been the unit of party organization, largely because of the fact that an important

group of local officers is elected from the county as a unit; parties tend naturally to desire a perpetuation of this plan, and a continuance without diminution of all local officers, inasmuch as each elective county officer serves as an added element of local political strength for the purpose of winning at the polls. For the same reason a party organization will always prefer to do away as far as possible with larger areas, and to have elections from each county as a unit rather than from a larger district. From the political standpoint there is a distinct basis for this attitude, and it should also be borne in mind that the attitude just spoken of has not merely a basis in party organization, but also a basis in local county sentiment.

At the present time there are fifty-one senatorial districts in Illinois. Of these seventeen are in Cook County, and three counties (St. Clair, Peoria and La Salle) each constitute a single senatorial district. The other counties of smaller population are necessarily grouped, and the number of counties in a senatorial district ranges from two to seven. From each senatorial district there are three representatives and one senator, and where there are more than four counties in a senatorial district (and there are eight such districts) it is, of course, necessary that all of the counties in excess of four have no members from their own borders in either of the two houses of the general assembly. Where a number of counties of small population are grouped together, each county may have a relatively equal chance of obtaining one or more of the four members of the general assembly, and which counties shall actually have no members within their borders depends largely upon local political considerations, upon plans of rotation, or upon other factors. The objection of small counties to such a plan is not based so much upon the opinion that they are discriminated against with reference to each other, as to the fact that each county does not have actual representation from within its own borders. Separate representation of each county in some manner cannot be accomplished under the existing plan, and this is, perhaps, the chief political objection to the plan.

On the other hand where a single small county is grouped with a large county actual discrimination may result, and the citizen of the smaller county may have little chance of election to either house of the general assembly. For the session of 1919 there were four districts composed of two counties each, in which a large county had the three representatives and the one senator, and the small county no representation from within its own limits (Will and Dupage, Kane and Kendall, Sangamon and Morgan, Madison and Bond). A county with a population well above the minimum of the state might be practically certain of having members in the general assembly if it were grouped with small counties, whereas its citizens might find it practically impossible to obtain election to either house of the general assembly if the same county were grouped with one large county.

In the session of 1919 there were twenty-four counties which had no member in either house, but eight of these counties were counties in excess of four in a district, and in such districts some counties necessarily were unrepresented. Sixteen of the twenty-four counties which were unrepresented in either house of the general assembly had a population of less than twenty thousand, but there are thirty-seven counties in the state with a population of less than twenty thousand and it is hardly possible to say that there is now a material underproportion of small counties represented in the membership of the two houses. To some extent the failure of a county to have a representative at one session in either house of the general assembly may be compensated by representation in a prior or later legislature. The theory of rotation among counties is oftentimes of influence where there are several counties in a senatorial district. Attention should, however, be called to the fact that the scheme of rotation has an undesirable influence upon the continuity of membership of the two houses, and leads to the selection of members for a definitely political consideration rather than upon the basis of ability or experience in office.

It is probable that there are few issues arising in the general assembly in which a county, as such, will suffer because it has no member of the general assembly from its own borders. Perhaps

the state system of highways adopted by the general assembly in 1917 was such an issue, although this is doubtful.

The present system of judicial circuits is one which leads to a greater degree of combination of counties than does the system of senatorial districts. There are seventeen judicial circuits outside of Cook County, and three judges are elected for each circuit. In 1919, the fifty-one judges came from fifty counties, Peoria County being the only one which had two of the judges for its circuit. There are two circuits of three counties each, and the others range from four to twelve counties. With one hundred and one counties divided into seventeen circuits, each circuit electing three judges, it is, of course, necessary that at least fifty counties have no circuit judges elected from within their borders. In general, the smaller counties of a judicial circuit are not able to have judges chosen from their borders, although in at least two cases the smallest county in a circuit has a circuit judge (6th and 14th circuits). There were but five counties in the state having a population below twenty thousand in 1910 from whose borders circuit judges were elected, although by the census of 1910 there were thirty-seven counties having a population below twenty thousand. With the larger area of circuits, the facts seem to indicate that it is more difficult to elect a judge from a county of smaller population than from a county of larger population within the same circuit, and this fact (if it be a fact) has some bearing other than the purely political one, for with respect to representation in the general assembly and with respect to judicial positions there is a disadvantage in having areas so constituted as to deprive persons of the possibility of election because of the counties in which they may chance to live. In the operation of the judicial system the county which has elected a judge from within its borders also has an advantage, for in the intervals between terms of court the judge will be available in his own county for the transaction of certain types of judicial business.

The suggestion has already been made that other areas than the county are artificial, at least from the standpoint of party organization, and there may be some value in having a different

and an artificial area for judicial elections. The constitution of Illinois provides a separate election date for judges, and a distinct lessening of the purely political factors may be accomplished by electing judges from a separate and artificial area created for that purpose alone, rather than by electing them from the county which is a unit of the most effective party organization. This matter is referred to in order to call attention to the fact that there may be no need for absolute unity in local governmental areas, and there may be an actual advantage in a lack of unity as to some matters. Of course, in connection with judicial areas it should be borne in mind that although periodical apportionments are permitted with respect to circuits and to supreme court judicial districts, there is now a distinct inequality of the population in these areas. As to circuits the constitution does not require an apportionment merely on the basis of population but provides that districts shall be formed "having due regard to business, territory and population."

Attention has already been called to some of the issues involved in the use of the county as the primary governmental area and to the problems involved in the proposal to create new and somewhat uniform larger areas for all purposes. Politically, the fear of a new deal and the fear of possible party consequences due to the reduction in the number of elective local offices raise a substantially insuperable barrier against the creation of new districts for simplified government.

On the other hand, the use of the county as a unit for all purposes involves practical difficulties of a serious character. From a political standpoint the thing perhaps most desired is that each county be represented in either one or both of the houses, and that each county elect the judges who are to preside over the courts sitting within the county.

With counties varying as much as they do in population, to give to each county separate representation even in the more numerous branch of the general assembly makes a legislative body too large, if other parts of the state are at the same time to be represented in proportion to their population. The rule of representation in Illinois since the establishment of the state,

and the rule in the great majority of the states, has been to give representation in substantial proportion to population. Of course, there is another and older principle of representation of areas not based upon population but somewhat modified by the factor of population, and it may be possible to adopt such a plan without increasing too greatly the membership of either or both of the houses. It may be possible, also, to carry out to some extent the notion of separate county representation, but to unite small counties for representative purposes so as to accomplish the purpose aimed at, not completely, but merely in so far as the variations of county population may seem under the circumstances to make advisable.

It has been a policy in Illinois since the beginning of statehood to limit the membership of the two houses. By the constitution of 1870, an absolute limit of fifty-one senators and one hundred and fifty-three representatives is set, and the rule is laid down requiring decennial reapportionments on the basis of population. This means that when one part of the state increases more rapidly than another part, it obtains under a reapportionment an increase of representation at the expense of the other part of the state, forcing a redistribution and involving necessarily the loss of office by some members of the general assembly who came from other parts of the state under an earlier apportionment. In Illinois, Cook County has increased more rapidly in population than the rest of the state, and each new senatorial district assigned to Cook County has involved taking away a senatorial district from the rest of the state, with the necessary readjustment of political areas and the necessary retirement from political life of some persons who might otherwise have continued in the general assembly from districts outside of Cook County. This factor has had a good deal of influence in the creation of the present feeling of the other parts of the state against Cook County. This feeling is not based purely, or perhaps primarily, upon the fear that Cook County may dominate the state politically, although this fear has been present.

A good illustration of what is likely to occur if the membership of either or both of the houses is unlimited appears in the

national house of representatives. Decennial apportionments take place upon the basis of population, and there is no limitation as to the number of members of the federal house. Each state desires to retain the number of members which it has, and all of the members of the house from that state naturally have the same desire. If the states which have not increased in population, or which have increased slowly, are to retain the same number of representatives, necessarily the states which have increased more rapidly in population must obtain upon a proportional basis additional representatives, and this forces a steady increase in the number of members of the house until that body has become cumbersome and ineffective. Somewhat the same influence may be seen in connection with the Chicago Fifty-Ward Act which was rejected on a referendum in Chicago in 1919. The ward apportionment in Chicago was upon a thirty-five ward basis with two aldermen from each ward, and the new legislation if adopted sought to bring about a more equitable apportionment upon the basis of population and to reduce the number of aldermen to fifty, one from each ward, thus making it necessary that at least twenty aldermen should retire from the city council.

If a reapportionment is likely to result in increasing the number of offices, there is a definite political incentive to make such a reapportionment. If, on the other hand, a reapportionment necessarily results not only in a redivision of territory, the political consequences of which are uncertain, but also in an actual reduction of the number of positions to be filled, there will normally be a distinct reluctance to reapportion. As has already been suggested, this is the situation with respect to senatorial apportionments in Illinois, and although the feeling against increasing Cook County's representation has some definite independent basis, the failure to make a senatorial reapportionment in Illinois since 1901 (although decennial reapportionments are commanded by the constitution) is due largely to the natural reluctance to diminish the number of members of the two houses for the rest of the state.

The problem of representative areas in Illinois is materially complicated by the issue as to representation between Cook County and the rest of the state. Cook County has increased in population much more rapidly than the rest of the state, and has steadily taken a larger proportion of the fixed number of senatorial districts. Cook County, in 1910, had about 43 per cent of the population of the state, and in 1920 is likely to have a larger proportion of the population. There is a natural reluctance to have one urban community control the majority of the members of the two houses, although as has already been noted, this reluctance has been strengthened by the fact that a gain of representation for Cook County means a loss of representation for the rest of the state, and a necessary loss of seats by some persons who may aspire to continue in the general assembly.

Cook County's representation is one of the most important questions before the constitutional convention now in session in this state. It is probable that some plan to limit representation will be proposed, but whether the limitation will apply to both houses or only to one of them is still in doubt. The problem is complicated by the cumulative voting system under which each senatorial district now elects one senator and three representatives. No district can be constituted with less than three representatives if the cumulative system is to be maintained, although there now seems to be a very definite agreement that this system should be abolished.

Once the number of senators and representatives for Cook County is agreed upon, the problem of apportionment within that county is divorced from the problem of local areas elsewhere. There remains, of course, the problem of the relationship of representative districts within Cook County to other local areas such as city wards in Chicago and townships in Cook County outside of Chicago. However, if the number of legislative members for the remainder of the state continues to depend upon the number to which Cook County is entitled, there will remain the definite political issue which presents itself through a possible future increase of Cook County representation bringing a proportional reduction in the actual number of existing representatives from other parts of the state.



With respect to the problem of judicial reorganization the counties of small population present a more serious issue than they do with respect to the state representative system. The small amount of business in some of the counties would make it substantially impossible to use each county as the area for the organization of the state judicial system, and at least with respect to the lesser counties a single court of original jurisdiction for each county as a unit would probably result in a great deal of waste. With reference to the problem of judicial organization, Cook County is not now of relatively great importance, for since 1870 Cook County has constituted a separate judicial circuit, and since the establishment of appellate courts, Cook County has constituted a separate appellate district. The one problem of political importance in judicial reorganization affecting Cook County is that regarding the supreme court election districts. There are now seven districts of unequal populations, and Cook County is united with four other counties to form the seventh district. The seventh district with one member of the supreme court had under the census of 1910 more than 46 per cent of the total population of the state.

#### CONCLUSION

From what has been said above it will be noted that the constitution-makers in Illinois have a number of important problems before them with respect to governmental areas. Shall each county be represented in the general assembly? Shall any one county be limited in its proportional representation? Shall larger judicial areas be maintained, or shall a county system of courts be established? Shall a simplified system of local governments be put in the constitution itself?

The constitution of 1870 contains numerous details as to governmental areas, and a number of limitations which have forced the multiplication of local governmental areas. The problems to be dealt with in connection with local areas are so complex that they cannot be adequately handled in a document of permanent application. It is easy to discuss and decide such

matters upon a theoretical basis and to place provisions in a constitution which at the given time seem to meet the situation, but the problems change and the constitutional solution fails because of its rigidity. The constitution of 1848 introduced a good deal of detail as to local governmental areas, and the constitution of 1870 increased this detail. The present constitutional provisions have not operated satisfactorily.

In connection with this discussion, attention should be called to another matter. For years there has been an active discussion of city government, and a somewhat active discussion of the problems of county government is now under way. But the issues of city government or of county government cannot be separated from the other issues connected with the problems of local government in general, and of political areas for other purposes than those of purely local government within the state.

## LEGISLATIVE NOTES AND REVIEWS

EDITED BY CHARLES KETTLEBOROUGH

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**Legislative Investigations.** Legislative investigations, on which future legislation is to be based, were authorized in 29 states during the sessions of 1918 and 1919. Even though the reports of several of these commissions or committees have been made and acted upon, it seems worth while to give them in the list as they serve to disclose the drift of public sentiment on mooted public questions. The subjects engaging public attention most widely and on which legislators desire further information before enacting laws include highways; the ownership and operation of public utilities; education; the care of the aged, feeble-minded, insane, dependents and delinquents; the judiciary system; pensions, annuities and retirement allowances; public finances; the standardization of salaries of public officials; the development of the water and hydro-electric power of the state; efficiency and economy in the state government; the care of negroes; the oversight of immigrants; taxation; farm tenantry; child welfare, industrial relations, unemployment, housing, strikes, boycotts, lockouts, social insurance and old age pensions; mining; the causes of the prevailing high prices; constitutional changes; and various other miscellaneous subjects of local interest.

**Constitutions.** The legislative reference bureau of Illinois was authorized to collect data for the constitutional convention which met in 1920; and Pennsylvania provided for the appointment of a commission on constitutional amendments of 25 citizens to study the provisions of the present constitution in the light of modern thought and report to the next legislature.<sup>1</sup>

**Courts and the Judiciary.** Alabama created a joint legislative committee to conduct an inquiry during the recess of the legislature relative to the reestablishment of chancery courts, the recircuiting of the circuit courts, the entire judicial system of the state and the publication of

<sup>1</sup> *Illinois Session Laws*, 1919, p. 63; *Penn. Session Laws*, 1919, p. 338.

court reports. Illinois created a metropolitan court commission of 15 members to investigate the organization and operation of the courts of Cook County and Chicago to draft the necessary bills and report to the session of 1921.<sup>2</sup>

*Economy and Efficiency.* The governor of Delaware is authorized to appoint a commission of five members to make a survey of the state and county offices and report to the next legislature. In New Hampshire, the county convention of any county, by a majority vote of its members, may provide for the appointment of a committee of five of its own members to investigate conditions pertaining to county offices. Montana created a state efficiency and trade commission to investigate the financial and business policies of the state and all institutions supported by state funds, to devise means of correction and to report by November 1, 1919. Oregon created a joint legislative committee to investigate the question of abolishing or consolidating state offices in the interests of economy.<sup>3</sup>

*Public finances.* The governor of Alabama was authorized to appoint an expert accountant to prepare a complete statement of the financial condition of the state, and a joint committee of two senators and three representatives was created to sit with the budget commission to study and review the financial condition of the state. Idaho appointed a committee of one senator and two representatives to review and audit all state accounts, and a committee of five to investigate the fiscal affairs of the adjutant-general's office.<sup>4</sup>

*Taxation.* New Jersey provided for the appointment of a commission of two legislators, a member of the state board of taxes and assessment and two citizens to investigate the tax laws of the state and recommend needful legislation; and a second commission of five members of the house, known as the commission for the survey of municipal financing, to study the subject of taxation and public finance. In 1918, a commission for the survey of municipal financing was created, to consist of seven members of the legislative assembly to survey the subject of tax revenues and the expenditures of municipalities, school districts and counties. California in 1919 created a legislative committee to investigate the equalization of taxes and the uncovering of

<sup>2</sup> Alabama *Session Laws*, 1919, pp. 32 and 169; Illinois *Session Laws*, 1919, p. 1016.

<sup>3</sup> Delaware *Session Laws*, 1919, p. 676; New Hampshire *Session Laws*, 1919, ch. 125; Montana *Session Laws*, 1919, p. 347; Oregon *Session Laws*, 1919, p. 831.

<sup>4</sup> Alabama *Session Laws*, 1919, pp. 105 and 110; Idaho *Session Laws*, 1919, pp. 294 and 394.

new sources of revenue to provide additional funds, more particularly for the schools and benevolent institutions. Washington created a commission, consisting of the governor, the tax commissioner, two senators and three representatives to study personal property taxation and report to the next legislature.<sup>5</sup>

*Salaries.* Illinois provided for the appointment of a salary investigation commission consisting of three senators, three representatives, the lieutenant-governor, the secretary of state, the auditor, attorney-general, director of finance, the president of the state university and one member of the civil service commission to investigate and report to the governor a plan for standardizing salaries, wages, fees and other compensation of all state employees and report by July 1, 1920. In Indiana, the governor was authorized to appoint a commission of four who have special knowledge of living, industrial and wage conditions to classify the salaries and wages of all state house employees, to standardize such salaries and bring them into conformity with salaries and wages in industries.<sup>6</sup>

*Pensions.* Alabama instructed the legislative budget commission, which is authorized to sit during the recess of the split session, to investigate the subject of Confederate veterans' pensions and recommend such measures as will adequately provide for them during the remainder of their lives. New Jersey created a pension and retirement fund commission of two senators and three representatives to make a survey of the subject of pensions and retirement funds for employees of municipal, county and state governments, including school teachers, and report to the legislature of 1920. Wisconsin created a pension laws commission of five members in each city of the first class to investigate the operation of all pension laws in force therein, the probable future cost and the character of such laws in operation in other states and countries. A legislative committee of two senators and three representatives was appointed to investigate the various systems of pensions, annuities and retirements for teachers in operation and report to the governor before the session of 1921. New York, in 1918, created a commission of seven members, one of whom is the superintendent of insurance, to inquire into the subject of retirement pensions, allowances and annuities for state and municipal officers and employees, especially with reference to the method of establishing and maintaining the

<sup>5</sup> *New Jersey Session Laws*, 1919, pp. 703, 710; 1918, p. 1192; *Calif. Session Laws*, 1919, p. 1546; *Wash. Session Laws*, 1919, pp. 741 and 748.

<sup>6</sup> *Illinois Session Laws*, 1919, p. 134; *Indiana Session Laws*, 1919, p. 419.

fund from which such pensions are paid. The report was to be made on February 1, 1920.<sup>7</sup>

*Educational Needs.* Alabama provided for the appointment of a commission of five to study the educational system of the state, to determine its efficiency and report by July 1, 1919. In California, a legislative committee of three senators and three representatives was appointed to investigate the needs and cost of education throughout the state and report during the year 1919. A state school commission was created in Arkansas, consisting of the state superintendent as chairman, together with representatives of the civic and social organizations of the state, to study educational needs and conditions and recommend a progressive program of education. Georgia created an illiteracy commission of ten members, including the governor and the state superintendent of schools, to conduct researches and collect data relative to adult illiteracy.<sup>8</sup>

*Charities and Corrections.* Connecticut created an infirmary commission consisting of the comptroller, commissioner of health, secretary of the state board of charities, the governor and three other persons to investigate the need of a state infirmary for the care and treatment of diseased, deformed and incurable persons, the indigent and aged, the poor of towns having no almshouse and state paupers and report by February 1, 1921. Idaho directed the state affairs committee of the house and senate, by a special committee of its members, to investigate and report on state institutions. Georgia appointed a committee of five to investigate the question of the number and condition of the feeble-minded in the state. Oregon invited the Rockefeller Foundation to make a survey of the treatment and care of the insane, and appointed a committee of six persons to coöperate, and authorized the University of Oregon to investigate dependency, delinquency and defectiveness and the agencies designed for their correction and report to the next legislature.<sup>9</sup>

*Roads.* The legislative counsel of California was directed to study the existing laws of California and of other states relative to roads,

<sup>7</sup> Ala. *Session Laws*, 1919, p. 67; New Jersey *Session Laws*, 1919, pp. 712 and 1193; Wisconsin *Session Laws*, 1919, chs. 514 and 564. New York *Session Laws*, 1918, p. 1256 and 1919, p. 30.

<sup>8</sup> Ala. *Session Laws*, 1919, p. 27; Calif. *Session Laws*, 1919, p. 1523; Ark. *Session Laws*, 1919, p. 495; Georgia *Session Laws*, 1919, p. 253.

<sup>9</sup> Conn. *Session Laws*, 1919, ch. 235; Idaho *Session Laws*, 1919, p. 615; Georgia *Session Laws*, 1918, p. 921; Oregon *Session Laws*, 1919, pp. 834, 838.

streets and bridges and report bills codifying and amending the California acts on or before November 1, 1920. In Alabama, a joint committee consisting of the president pro tem of the senate, the speaker of the house, three senators and five representatives, was authorized to sit during the recess of the legislature to provide a system for the employment of state and county convicts, especially on the public roads and to consider the whole question of the maintenance and supervision of public roads. In Illinois, a committee of three senators and three representatives was appointed to investigate the whole question of road building material. In West Virginia a constitutional amendment providing for a system of state highways is pending. In the event that this amendment is adopted, the governor is to appoint a committee which, together with the state highway commission and a representative of the national government, is to make such investigations as may be necessary and prepare bills creating a state highway system and report to the legislature of 1921. A commission consisting of two senators, three representatives and one member of the highway commission was created in New Jersey to investigate the construction, maintenance and administration of county and township roads and to codify and supplement the existing laws. In Georgia, a commission of five was created to investigate the needs of highway legislation, to draft a highway commission bill and report to the legislature. Florida created a legislative committee of five members to perfect a plan for a needed system of permanent hard surfaced roads, to ascertain the number of miles now in existence, the probable cost of material, labor and transportation and report to the session of 1919.<sup>10</sup>

*Street Railways.* Connecticut created a railway investigation commission of three senators, four representatives and five citizens to investigate the conditions of the street railways of the state and report with drafts of bills by April 1, 1919. At the same session the public utilities commission was directed to investigate the conditions under which the street railways are operated and report to the legislature of 1921 with suggested legislation.<sup>11</sup>

*Water Power.* Maine created a water power commission of ten citizens which is empowered to employ an engineer and conduct an

<sup>10</sup> Calif. *Session Laws*, 1919, pp. 18 and 1539; Ala. *Session Laws*, 1919, p. 69; Ill. *Session Laws*, 1919, p. 1018; West Va. *Session Laws*, 1919, p. 503; New Jersey *Session Laws*, 1918, p. 1197; Georgia *Session Laws*, 1918, p. 923; Florida *Special Session Laws*, 1918, p. 115.

<sup>11</sup> Conn. *Session Laws*, 1919, ch. 3 and p. 2938.

investigation of the water power resources of the state; the flow of rivers; drainage areas; the location, nature and size of lakes and their value and capacity as storage reservoirs; and the generation and transmission of electric power, to determine whether the water resources should be developed by the state or by private capital. New Hampshire appropriated \$3500 to complete the investigation commenced under Chapter 256 of the laws of 1917 to determine the amount of water power available on the streams of the state and the best methods of utilizing such power. The work is to be done in coöperation with the national government by a special commission or by the public service commission. South Dakota created a hydro-electric commission to make an engineering reconnaissance of the Missouri River in South Dakota, to determine its feasibility for power sites and select one site for immediate development, and to survey the location selected, to determine its cost and the market for electrical current, and report to the session of 1921. Arkansas provided for the appointment of a commission of three members to study the resources in undeveloped navigation in the state, the unused water power and the reclamation of low lands and report to the next legislature.<sup>12</sup>

*State Owned Utilities.* Arizona created a legislative committee to investigate the question of financing, constructing and maintaining a state smelter and sampling works and to report to the legislature of 1921. Nevada created a commission of three members to study the feasibility of constructing and equipping a state cement plant and state smelter, and authorized the issuance of \$100,000 in bonds to pay for such construction and equipment. Moreover, the University of Nevada is directed to investigate the question of the production and cost of scouring and manufacturing plants and to publish the results in a bulletin. Texas authorized the prison commission to investigate and report on the feasibility of a state owned and operated cement plant including the cost of land and machinery. Kentucky provided for the appointment of a committee of five members of the legislature to investigate and report whether it would be desirable for the state to establish a state bindery and printery to do all the state printing work, including text books used in the schools.<sup>13</sup>

<sup>12</sup> Maine *Session Laws*, 1919, p. 131; New Hampshire *Session Laws*, 1919, ch. 207; South Dakota *Session Laws*, 1919, p. 226; Arkansas *Session Laws*, 1919, p. 502.

<sup>13</sup> Arizona *Session Laws*, 1919, p. 306; Kentucky *Session Laws*, 1918, p. 713; Nevada *Session Laws*, 1919, pp. 193, 481; Texas *Laws*, Second Called Session, 1919, p. 463.



*Mines.* Illinois provided for the reappointment of a mining investigation commission of three coal miners, three operators and three citizens to investigate the methods and conditions of mining with special reference to the safety of human life and property and the conservation of coal deposits.<sup>14</sup>

*Negroes.* Maryland created a commission of five members to investigate the question of tuberculosis among negroes, to propose means for its treatment or control and to report to the session of 1920. Missouri established a negro industrial commission of sixteen members, one from each congressional district, to investigate and recommend remedies for the moral and industrial betterment of negroes.<sup>15</sup>

*Immigrants.* Illinois created an immigrants commission to make a survey of immigrants, alien born and foreign speaking populations, relative to their distribution, conditions of employment, standards of housing and living, their economic, financial and legal customs, their provisions for insurance and other prudential arrangements, their social organization and educational needs.<sup>16</sup>

*Farm Tenantry.* Illinois also created a farm commission of five members, including the director of agriculture, to investigate conditions regarding the operation and leasing of farm lands, the growth of farm tenantry, the maintenance of the fertility of the soil, crop production and profitable agriculture. The report is to be made on December 20, 1920.<sup>17</sup>

*Child Welfare, Industry and Social Insurance.* South Dakota created a child welfare commission consisting of the superintendent of public instruction, the superintendent of the state board of health, the president of the woman's board of investigation, the parole officer of the state board of charities and corrections and one citizen, to investigate the condition of children, advise pertaining to their care and instruction, investigate those in industry and advise employers as to the proper labor conditions and enforce the child labor laws. California created a legislative committee to act during the constitutional recess to investigate the question of the unemployment of returned soldiers. In Michigan, an industrial relations commission was created, consisting of representatives of employers and employees, to investigate industrial conditions including unemployment, housing, safety and

<sup>14</sup> Illinois Session Laws, 1919, p. 90.

<sup>15</sup> Maryland Session Laws, 1918, p. 1025; Missouri Session Laws, 1919, p. 82.

<sup>16</sup> Illinois Session Laws, 1919, p. 8.

<sup>17</sup> Illinois Session Laws, 1919, p. 83.

health of workers, stabilizing of employment, the employment of women and children, vocational education, hours of labor and old age pensions. Washington created an industrial code commission to investigate the evils existing in industrial life, including prevention of strikes, lockouts, boycotts and orderly settlement of disputes, and recommend the proper remedies and report to the next legislature. Indiana created a commission of five citizens to investigate the subjects of child welfare and social insurance.<sup>18</sup>

*Prices.* Illinois appointed a joint legislative committee to inquire into the prices of building material and determine whether conspiracies or combinations exist, and any other elements which enter into the prevailing high prices. A joint legislative committee in California was authorized to act during the constitutional recess to investigate the high cost of bread, milk, eggs and other necessities of life. Oregon authorized a joint legislative committee to investigate the cost of the production of milk, butter fat and the cost of condensing and manufacturing milk.<sup>19</sup>

*War Records and Memorials.* The governor of West Virginia is authorized to appoint a commission of representative citizens to report to the next legislature what records should be compiled and preserved in each county relative to the war and its auxiliary organizations; what tablets, monuments or memorials should be erected and what records should be kept and what memorials erected by the state.<sup>20</sup>

*Miscellaneous.* Colorado appointed an Italian claims investigating committee of five legislators to investigate the claims against the state by the royal government of Italy for damages and indemnities on account of the alleged loss of life and destruction of property of Italian subjects during the coal mine strike of 1914.<sup>21</sup> The senator and representative from Jefferson County, Alabama, were authorized to sit during the recess of the legislature to report on appropriate legislation concerning the salaries of officers, the cost and results of convict labor on the public highways and other local matters peculiar to Jefferson County.<sup>22</sup> Illinois provided for the appointment of a legislative com-

<sup>18</sup> South Dakota *Session Laws*, 1919, p. 118; Calif. *Session Laws*, 1919, p. 1442; Michigan *Session Laws*, 1919, p. 490; Wash. *Session Laws*, 1919, p. 566; Ind. *Session Laws*, 1919, p. 771.

<sup>19</sup> Illinois *Session Laws*, 1919, p. 998; Calif. *Session Laws*, 1919, p. 1447; Oregon *Session Laws*, 1919, p. 855.

<sup>20</sup> West Virginia *Session Laws*, 1919, p. 240.

<sup>21</sup> Colorado *Session Laws*, 1919, p. 232.

<sup>22</sup> Alabama *Session Laws*, 1919, p. 57.

mittee known as the Zion investigating commission to investigate the charge that The Christian Catholic Apostolic Church of Zion at Zion City and its manager is endowed with divine power, that he advocates a false religion to secure money from innocent persons, also all its business transactions as well as similar information relative to other like institutions.<sup>23</sup> Maine appointed a sea food protective commission to conduct such an investigation as will show that an emergency exists for the passage of federal legislation to reduce the number of sharks.<sup>24</sup> Delaware appointed a commission to view the Indian river inlet and report the cost of opening to the next legislature.<sup>25</sup> Kansas created the Vicksburg National Park memorial commission to recommend a suitable memorial for Vicksburg Park.<sup>26</sup> Maryland created a commission to view the various cemeteries of the state which have been encroached upon and recommend the necessary legislation.<sup>27</sup> Minnesota created The Great Lakes-St. Lawrence Tidewater Commission to investigate the value and feasibility of a project to connect the great lakes with the Atlantic seaboard, and also directed the railroad and warehouse commission to investigate the proper method of requiring purchasers of grain, subject to dockage, to reimburse the producers.<sup>28</sup> New Jersey created a commission to confer with the authorities of New York relative to the establishment of a central port authority.<sup>29</sup> New Hampshire created a commission to consider the purchase by the state of The Old Man of the Mountain.<sup>30</sup> Michigan provided for the appointment of a special commission to investigate the question of sprinkler insurance,<sup>31</sup> and Oregon authorized a legislative committee to investigate the question of the shipbuilding industry.<sup>32</sup> Florida provided for the appointment of a legislative committee to inquire into the question of the handling and sale of agricultural seeds and report a bill to the legislature of 1921.<sup>33</sup> Texas<sup>34</sup>

<sup>23</sup> *Illinois Session Laws*, 1919, pp. 215 and 1007.

<sup>24</sup> *Maine Session Laws*, 1919, p. 200.

<sup>25</sup> *Delaware Session Laws*, 1919, p. 677.

<sup>26</sup> *Kansas Session Laws*, 1919, p. 446.

<sup>27</sup> *Maryland Session Laws*, 1918, p. 749.

<sup>28</sup> *Minnesota Session Laws*, 1919, pp. 765 and 769.

<sup>29</sup> *New Jersey Session Laws*, 1919, p. 709.

<sup>30</sup> *New Hampshire Session Laws*, 1919, ch. 142.

<sup>31</sup> *Michigan Session Laws*, 1919, p. 887.

<sup>32</sup> *Oregon Session Laws*, 1919, p. 843.

<sup>33</sup> *Florida Session Laws*, 1919, p. 358.

<sup>34</sup> *Texas Session Laws*, 1919, p. 9.

appropriated \$12,000 to be used by the state board of health in making a house-to-house canvass of one or more counties to obtain exact and scientific data as to health conditions to be used to carry out a state-wide campaign to prevent disease.

C. K.

**Special Municipal Corporations.** Special municipal corporations continue to be a prolific source of legislation. In 34 states legislating in this field in 1919, there were 1096 acts passed directly concerning 82 varieties of districts which are essentially special municipal corporations, autonomous local governments for a special purpose, and over 75 other acts indirectly affecting such districts or dealing with the somewhat kindred special assessment and special taxing districts.

In general the legislation of 1919 was primarily amendatory. The Conservancy Act of California,<sup>1</sup> the California Irrigation Act,<sup>2</sup> the Irrigation District Act of Nevada,<sup>3</sup> and of Utah,<sup>4</sup> and the Wisconsin Drainage Law,<sup>5</sup> are comprehensive new acts on old subjects, designed to revise the existing law, primarily to provide an adequate method for coöperation between districts and the United States. The California Conservancy Act provides alternative procedure and does not displace any existing law, but the California Irrigation Act, and the Utah and Wisconsin acts revise previous legislation. The Nevada act repeals but one of the existing statutes.

Most of the shorter acts deal with the authorizing or validating of bond issues, raising tax levy limitations, creating special districts designated in the act, curing defects in proceedings for organization, elections, etc., and providing in detail for elections and for the form and issuing of bonds.

Tendencies toward centralization and supervision continue to appear here and there. Under the Conservancy Act of California, if districts are being organized within or partly without territory in which other districts are being organized or already exist, the boards of supervisors of the counties concerned hold a joint meeting to determine to what extent the districts shall be consolidated or boundaries adjusted, thus somewhat modifying the existing tendency to create separate

<sup>1</sup> California *Session Laws*, 1919, ch. 332, p. 559.

<sup>2</sup> California *Session Laws*, 1919, ch. 341, p. 671.

<sup>3</sup> Nevada *Session Laws*, 1919, ch. 64, p. 84.

<sup>4</sup> Utah *Session Laws*, 1919, ch. 68, p. 204.

<sup>5</sup> Wisconsin *Session Laws*, 1919, ch. 557.

districts without regard to what is best for the larger areas. Under the California Irrigation Act, the state irrigation board has power (originally given in 1917, ch. 346) to consolidate into single districts, irrigation, reclamation, and drainage districts and other political subdivisions organized to provide irrigation, reclamation and drainage. The consolidated district is known as a conservancy district, and the chairmen of irrigation, reclamation, drainage, conservancy and other districts constitute an advisory board to consult with the state board. Irrigation bonds when authorized and issued are delivered to the state treasurer and sold by him. They are signed by the president of the state irrigation board on behalf of the irrigation or conservancy district, and are obligations of the district. Rates established by conservancy districts for supplying water are subject to approval of the state railroad commission. Regulation of ditches by districts is subject to the approval of local or state health officers.

In Washington, in the case of irrigation districts,<sup>6</sup> at the hearing on the question of organizing a district, the state hydraulic engineer sits with the board of county commissioners. In Wisconsin the railroad commission may approve or amend drainage district plans for work in navigable waters and streams, and may hold a hearing on the question.<sup>7</sup> In Utah, for irrigation districts, the state engineer is required to make the preliminary survey before a district is organized.<sup>8</sup> He reports to the board of county commissioners, which has charge of the proceedings.

A few new purposes for which these districts may be created are found in the legislation of the past year. Kansas authorizes the formation of railroad aid benefit districts,<sup>9</sup> consisting of townships or part of townships or the whole of a county, for the purpose of making subscriptions to railroad stock to aid in the construction of railroads in and through such districts, in case it is not practicable to issue township bonds therefor. The district is incorporated, and may issue bonds for the purpose up to twenty per cent of its assessed valuation, when authorized at a special election. A similar act applies to townships without this special form of organization.

Nebraska has provided for the organization of light, heat and power districts<sup>10</sup> for the purpose of distributing light, heat and power by the

<sup>6</sup> *Washington Session Laws*, 1919, ch. 180, p. 527.

<sup>7</sup> *Wisconsin Session Laws*, 1919, ch. 557.

<sup>8</sup> *Utah Session Laws*, 1919, ch. 68, p. 204.

<sup>9</sup> *Kansas Session Laws*, 1919, ch. 240, p. 317.

<sup>10</sup> *Nebraska Session Laws*, 1919, ch. 217, p. 929.

use of electric current. The district is a special municipal corporation, formed on affirmative vote of the electors of the district, which may lie in one or more counties. A governing board of directors is elected at the annual district meeting. The district provides merely the distributing system, securing its current from private producers.

Arizona, although having provided for electrical districts in any county, in 1915, has now authorized the creation of power districts<sup>11</sup> to consist of agricultural lands which are susceptible of cultivation by the same general system or by individual systems of works for the generation or distribution of power.

Nevada authorized the creation of special assessment districts which are not corporations. The state reclamation and settlement board, created by the act, may establish reclamation and settlement districts<sup>12</sup> for the purpose of providing, improving and equipping rural homes for soldiers, sailors, marines, and others who have served with the armed forces of the United States in the European war and other wars of the United States, and for other loyal citizens. The state board may contract with the national government or with irrigation or drainage districts for the reclamation of the land; may acquire land in the name of the state; may dedicate land for schools, churches, roads, and other public purposes, and may open such town sites as may be deemed desirable or authorized by contract with the United States. Land in the district pays a special assessment for reclamation and settlement purposes, but no mention is made of any local autonomy.

Florida authorized the creation of a stump and land clearing district in Clay county; inlet districts, to connect the waters of certain rivers with the Atlantic Ocean; special navigable canal districts; and created the Winter Haven Lake Region Boat Course District.<sup>13</sup>

Texas authorized the formation of a new kind of conservation district, or fresh water supply district, for the purpose of conserving and distributing fresh water from lakes, reservoirs, wells, springs and rivers for domestic or commercial purposes.<sup>14</sup>

In some of the details of organization and government of these special municipal corporations there are several amendments of interest. California in connection with irrigation districts and conservancy

<sup>11</sup> *Arizona Session Laws*, 1915, ch. 49, p. 97; 1919, ch. 173, p. 312.

<sup>12</sup> *Nevada Session Laws*, 1919, ch. 191, p. 343.

<sup>13</sup> *Florida Special Session Laws*, 1919, pp. 146, 157, 173, 249, 1492.

<sup>14</sup> *Texas Session Laws*, 1919, ch. 48.

districts provides that for elections on the question of organizing a district, choosing directors or authorizing bond issues, land owners may vote by proxy. In irrigation districts each owner has one vote for each acre of land owned in the district; in drainage districts, one vote for each one cent of assessment against his land.<sup>16</sup> In Nevada a corporation is a person under the election law of irrigation districts, and may vote through its authorized agent under the same conditions as real persons.<sup>16</sup>

Two other provisions are new. Hitherto it has usually been required that the territory of which a district may be formed must be contiguous and compact. For conservancy districts and irrigation districts in California<sup>17</sup> and drainage districts in Wisconsin<sup>18</sup> territory in a district need not be contiguous or all in one body, provided that it be so situated that public health and welfare will be promoted by the irrigation or drainage of each separate body of land by individual systems.

Hitherto a district has not been permitted to include territory of any other districts of similar name and similar purpose. The conservancy law of California, however, provides that territory may be included in more than one conservancy district.<sup>19</sup> Since these districts are combinations of irrigation, reclamation and drainage districts, or possess these combined purposes, it is probable that territory would not be included in two districts for identically the same limited purpose.

Irrigation districts<sup>20</sup> in California are authorized to provide for the development of electrical power, and to sell the power to municipalities, corporations, public utility districts or individuals, thus acquiring a purpose similar to that of the electrical and power districts of Arizona.

In California, conservancy districts may be formed for forestation or reforestation of lands when that is necessary and incidental to the conservation and control of flood waters.<sup>21</sup> In addition to more than 700 reclamation districts established in California under general laws, thirteen larger districts have been created by special laws and given

<sup>16</sup> California *Session Laws*, 1919, ch. 332, pp. 559, 565; ch. 341, sec. 10; ch. 520, p. 1092, ch. 341, p. 671.

<sup>17</sup> Nevada *Session Laws*, 1919, ch. 64, p. 84.

<sup>18</sup> California *Session Laws*, 1919, ch. 332, pp. 559, 561; ch. 341, p. 671, sec. 6b; ch. 344, p. 714, sec. 1.

<sup>19</sup> Wisconsin *Session Laws*, 1919, ch. 557.

<sup>20</sup> California *Session Laws*, 1919, ch. 332, pp. 559, 593, sec. 61.

<sup>21</sup> California *Session Laws*, 1919, ch. 370, p. 778.

<sup>22</sup> California *Session Laws*, 1919, ch. 332, pp. 559, 596, sec. 67.

arbitrary numbers, one such district established in 1919 being No. 2031.<sup>22</sup>

The Metropolitan Park District of Washington is given, among other powers, that of establishing and maintaining aviation landings.<sup>23</sup>

In the legislation of 1919, there were no less than 83 different names given to the various types of districts. In California there were 16 classes of districts, each with a different name; and in Arizona, Illinois, Nebraska, New York and Washington, there were from five to seven different kinds of these special districts in each state.

To some extent the large number of names is due to variations in the terms for districts with similar or closely related functions; and most of the numerous titles may be classified in a few main groups. But there are frequently a number of specialized terms for different districts of the same group in the same state; and the functions of other kinds of districts frequently overlap.

Thus there are 17 varieties of school districts<sup>24</sup> (in 24 states),<sup>25</sup> as many as 4 or 5 varieties in the same state. There are drainage districts in 13 states,<sup>26</sup> and irrigation districts in 11 states<sup>27</sup> (6 states having both kinds); and also diking districts in Washington, drainage improvement districts and mosquito abatement districts in California, levee districts in California and Tennessee, reclamation districts in California, Indiana and Washington, reclamation and settlement

<sup>22</sup> California *Session Laws*, 1919, ch. 338, p. 658.

<sup>23</sup> Washington *Session Laws*, 1919, ch. 135, p. 382.

<sup>24</sup> The names by which school districts are designated in the 1919 legislation are as follows:—community high school district, community consolidated school district, consolidated rural school district, consolidated school district, county school district, educational districts, high school district, independent school district, joint high school and elementary school district, metropolitan school district, public school district, rural agricultural school district, rural school district, special independent or common school district, special school district, union free school district, and union school district. The use of the term "community" in designating school districts is new. The particular purpose of each district is sufficiently indicated by its name.

<sup>25</sup> Alabama, Arizona, California, Colorado, Connecticut, Delaware, Idaho, Illinois, Indiana, Iowa, Kansas, Montana, Michigan, Minnesota, Missouri, Nebraska, Nevada, New Jersey, New York, North Dakota, Tennessee, Washington, West Virginia and Wisconsin.

<sup>26</sup> California, Colorado, Idaho, Illinois, Iowa, Kansas, Missouri, Nevada, Oregon, Wyoming, Tennessee, Utah and Wisconsin.

<sup>27</sup> Arizona, California, Colorado, Idaho, Montana, Nebraska, Nevada, Oregon, Utah, Wyoming and Washington.



districts in Nevada, sanitary districts in California and Illinois, sanitary drainage districts in Nebraska, and inlet districts, navigable canal districts and a boat course district in Florida.

Water districts are provided for in five states (Arizona, Colorado, Illinois, Maine and New York), and also conservancy and county water districts, municipal water districts and storm water districts in California, water improvement districts and fresh water supply districts in Texas, and a metropolitan water district in Nevada.

Road districts are found in Florida, Illinois, Missouri and Nebraska; bridge districts in Florida, Maine, Missouri and Oklahoma; boulevard districts in California, good roads districts in Michigan, highway districts in Idaho and Wisconsin, and independent highway districts in Washington.

Park districts are established in Illinois and Indiana; also a forestry preserve district in Illinois, a forest fire district in California, and a metropolitan park district in Washington.

Other special districts deal largely with other public improvements and public utilities. There are electrical districts and power districts in Arizona, fire districts in Connecticut and New York, lamp and lighting districts in New York; light, heat and power districts in Nebraska; special municipal tax districts, municipal improvement districts, protection districts and public utilities districts in California; municipal districts in Connecticut and Montana, health districts in Michigan and New York, paving districts in Nevada, sewer districts in four states (California, Connecticut, Maine and New York), port districts in Oregon, and railroad aid benefit districts in Kansas.

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**Anti-Syndicalist Legislation.** Recent state criminal syndicalist legislation appears in the two general forms of anti-red flag laws and laws defining the crime of criminal syndicalism or of sedition. Many states have a flag law, often of war time origin, "to prevent the desecration of the flag of the United States" or to forbid carrying any flag in a parade unless the American flag is carried ahead of it, or displaying any flag unless the American flag is displayed above it. A Massachusetts law of 1913 is of dual character. Section one allowed the carrying in parade only of the national flag, a state flag, or the flag of a friendly foreign nation. This section, though now common in other flag legislation, was repealed within one month. Section two is still in

force and is typical of syndicalist flag legislation: "No red or black flag, and no banner, ensign, or sign, having upon it any inscription opposed to organized government, or which is sacrilegious, or which may be derogatory to public morals" shall be carried in parade. In 1914 Rhode Island enacted that no flag shall be carried in any parade unless accompanied by the flag of the United States; and followed this with the substance of the Massachusetts section two, omitting only the sacrilegious item.

During 1919 twenty-four states passed syndicalist legislation in the form of flag laws or flag sections of other laws. The southern line of such legislation includes South Carolina, West Virginia, Ohio, Indiana, Illinois, Arkansas, Oklahoma, Colorado, Arizona and Washington. Along the Atlantic are Rhode Island (with further flag legislation in her new sedition law), Connecticut, Vermont, New York, New Jersey and Delaware. The others are Michigan, Wisconsin, Minnesota, Iowa, South Dakota, Kansas and the mountain states of Montana and Idaho. The laws of Colorado, Michigan and New York apply to red flags only. The laws of Connecticut, Idaho, Iowa, Kansas, Montana, Oklahoma and Wisconsin apply to red flags or other emblems. Montana's statute reads "red flag, red banner, or red emblem, commonly accepted as symbolic of social or industrial revolution, or any flag, banner, or emblem bearing words, inscriptions, or representations opposed to organized government . . ." The Kansas title is "An act relating to the flag, standard, or banner of Bolshevism, anarchy, or radical socialism . . ."

While some of the laws merely state reasons for prohibition of the display of the flag, others limit the prohibition to display for a given purpose. Thus the Wisconsin law forbids display of the red flag or any other emblem symbolizing or intended to symbolize "a purpose to overthrow, by force or violence" or by injury to property, the government of the United States, or of the state of Wisconsin, or all government. Oklahoma describes (or limits) the banners forbidden as those "indicating disloyalty or a belief in anarchy or other political doctrines" whose objects are disruption of organized government or defiance of the laws. The Connecticut law forbids display "as a symbol calculated to, or which may, incite people to disorder or breaches of law." The *Yale Law Journal* comments on this: "And the Harvard game approaches in New Haven—if not this year, then next!"

Minnesota forbids all display of "any red or black flag," except for use by a railroad as a signal, or on a public highway as a warning.

Other states that specify "any red or black flag" and add "or any flag or emblem or sign" are Arizona, Delaware, Massachusetts, New Jersey, Ohio, South Carolina, Vermont and West Virginia. Illinois covers the ground briefly with a paragraph in her sedition law forbidding the display of any flag or emblem to symbolize a purpose to overthrow the representative form of government by force, violence, or injury to person or property. Indiana had used nearly the same words in section one of her combined flag and sedition law, but included also among the forbidden purposes the overthrow of government by the general strike. The Vermont law forbids displaying a red flag except as a danger signal, a black flag except as a weather signal, or any banner or sign opposed to organized government or public morals, or sacrilegious. The flag clause in Rhode Island's new sedition law says "wilfully display" as "symbolic or emblematic" of a form of government proposed as preferable to that prescribed by the constitution. The Arkansas statute declares it to be unlawful to wear or display any symbol or flag to encourage or calculated to aid anyone in injuring life or property, or in the overthrow of government without due process of law. The Kansas statute makes it felony to display any flag, standard, or banner, of any color or design that is now or may hereafter be designated as the flag, standard, or banner of Bolshevism, anarchy, or radical socialism.

Colorado, by a separate section, makes it the duty of all peace officers to see that her flag law is "strictly enforced." Iowa changes the crime from a misdemeanor to a felony if the party carrying a forbidden flag is found to be armed. Massachusetts and Ohio specifically authorize the arrest of flag law violators without a warrant. Ohio exempts college pennants from the application of the law.

The flag law of Washington is broader in scope and has more sections (five) than any other. It forbids display, ownership, or possession of any "flag, banner, standard, insignia, badge, emblem, sign, or device of, or suggestive of, any organized or unorganized group of persons who, by their laws, rules, declarations, doctrines, creeds, purposes, practices, or effects, espouse, propose or advocate any theory, principle, or form of government antagonistic to, or subversive of, the constitution, its mandates, or laws of the United States or of this state." Violation is felony; and every article kept or owned in violation of this act is declared to be pernicious and dangerous to the public welfare, and subject to be searched for and destroyed. It is not to apply to flags or emblems of nations with accredited representatives in the United States, nor to historical museums of recognized character.

Violation of the flag law is a misdemeanor in the following states, which are arranged nearly in the order of increasing severity of penalty: Ohio, South Carolina, Wisconsin and South Dakota; Massachusetts and Rhode Island; Connecticut and Vermont; New York, Arizona, Arkansas and Iowa. In West Virginia the first offense is a misdemeanor and the second is a felony. Indiana, Illinois, Oklahoma, California, Washington, Michigan, Minnesota, Montana and Idaho make the offense a felony. Fines range from \$1000 to \$5000. Prison terms range from one to five or ten years. New Jersey and Delaware call the crime a high misdemeanor, and in both the penalty is a fine up to \$2000, or imprisonment up to fifteen years, or both.

The federal sedition law of 1798 provided penalties for conspiring to oppose the government, intimidate any official, or advise rioting; and for "false, scandalous, and malicious writing against the government with intent to defame it or bring it into contempt." An act of the Philippine Commission in 1901 defined the crimes of treason, insurrection, and sedition. It was amended in 1907 by an act "to prevent the utterance of speeches or the use of language violative of good order or tending to disturb the public peace."

New York made the advocacy of criminal anarchy a felony in 1902; and defined it as the doctrine that organized government should be overthrown by force or violence, or by assassination, or by unlawful means. In Alaska a statute of 1913 makes it a misdemeanor to incite another to commit a crime. These facts are presented as introductory to a discussion of the recent sedition laws, often styled criminal syndicalism legislation.

"An Act defining the crime of criminal syndicalism and prescribing the punishment thereof," is the title of a bill vetoed by the governor of Washington on March 2, 1917, and passed over the veto early in the next legislative session (January 14, 1919). Idaho (March 14, 1917) and Minnesota (April 13, 1917) passed measures with title and contents nearly identical with that of Washington. They all followed very closely the model of the New York criminal anarchy bill, but dealt with criminal acts as means of accomplishing industrial as well as political ends. In 1918 the governor of Arizona vetoed a sabotage bill; and South Carolina, South Dakota and Montana passed measures "relating to criminal syndicalism" that are similar to the three earlier laws. "Social, economic, industrial, or political ends," are those now specified in the South Carolina law. Montana also passed a war time sedition act, which she reenacted in 1919 without the war time limita-

tion. Nebraska in 1918 passed a lengthy sedition act, applying to cases "with intent" to hinder the war; and a war time sabotage act.

During 1919, laws of this general nature were passed by twenty other states and by Hawaii. Also Washington passed a new law, slightly varied in outline but with new title and changed phraseology, a section of which repealed the once vetoed statute. North Dakota had a war time sabotage act, passed by the special session of 1918. In December, 1919, the legislature, by a two to one vote defeated a criminal syndicalism bill.

Twenty-five states have sedition laws that are primarily aimed at, or that are adapted to, the emergency of syndicalist activity, as follows: Rhode Island, Connecticut, New Hampshire and Vermont; New York and Pennsylvania; South Carolina, Arkansas, Oklahoma and New Mexico; West Virginia, Ohio, Indiana, Michigan, Illinois, Iowa, Minnesota and South Dakota; Montana, Wyoming, Utah and Idaho; Washington, Oregon and California.

The general character of this legislation may be seen in the titles of the acts. Two groups of titles show a tendency towards simplicity and uniformity of phrasing. In one of these the term used is "criminal syndicalism;" in the other it is "sedition." Then there is a miscellaneous group where the titles are varied and more wordy. The New York law was "An act to amend the code relative to criminal anarchy." The first Washington title was "An act defining the crime of criminal syndicalism." This is also the title used by Idaho, Ohio, Iowa, Hawaii, and Michigan. Minnesota and South Dakota have "An act relating to criminal syndicalism." Montana has "An act defining criminal syndicalism and the word sabotage." This title has been copied by Oregon, Utah, Oklahoma and California. Montana first used for this class of legislation the title "An act defining the crime of sedition." Connecticut has "An act concerning sedition," and also "An act concerning seditious utterances." Pennsylvania makes it "An act defining sedition," and New Hampshire, "to prevent the overthrow of government by force." Other forms of title are: "to protect the government of the state of Rhode Island and the government of the United States;" "to prevent the promotion of anarchy" (Vermont); "to define and punish anarchy and to prevent the introduction and spread of Bolshevism and kindred doctrines" (Arkansas); "defining the offence of incitement to crime and unlawful assemblies" (Wyoming); "prohibiting the performance of any act designed to destroy organized government" (New Mexico); "making it unlawful to advocate the

overthrow of the government of the United States, the state of Indiana, or all government."

While a number of states have included sabotage in the definition of criminal syndicalism, others have defined them separately. Montana put both terms into the title of her first law. Washington enacted two laws on March 19, 1919. One has the heading "Crime of Sabotage" and is entitled "An act to protect certain industrial enterprises wherein persons are employed for wage, and to prevent interference with the management or control thereof, and to prohibit the dissemination of doctrines inimical to industry . . . ." The other is given the heading "Prevention of Criminal Syndicalism;" and the title is "An act relating to crimes, providing penalties for the dissemination of doctrines inimical to public tranquility and orderly government." The West Virginia title is "An act to foster the ideals, institutions, and government of West Virginia and the United States and to prohibit the teaching of doctrines and display of flags antagonistic to the spirit of their constitution and laws."

New York in 1902 defined criminal anarchy as "the doctrine that organized government should be overthrown by force or violence, or by assassination . . . or by unlawful means." Section one reads "Any person who: (1) . . . teaches the duty, necessity, or propriety of overthrowing . . . organized government by force or violence, or by assassination . . . ; (2) Prints, . . . circulates . . . or publicly displays any . . . written or printed matter . . . teaching . . . ; (3) Openly, wilfully, and deliberately justifies . . . with intent to teach . . . the propriety of the doctrines of criminal anarchy; or (4) Organizes . . . or voluntarily assembles with any society . . . to teach or advocate such doctrine, is guilty of a felony." Sections two and three declare any assemblage to advocate such doctrines unlawful and make liable the owner of any building so used.

The first Washington statute (the model for several others) defines criminal syndicalism as "the doctrine which advocates crime, sabotage, violence, or other unlawful methods of terrorism as a means of accomplishing industrial or political reform." Any person—who teaches the duty or necessity of these; circulates any written or printed matter teaching reform, etc. by crime, etc.; justifies crime by word or writing with intent to advocate propriety of criminal syndicalism; or organizes or assembles with any society to advocate criminal syndicalism—is guilty of felony. Two or more meeting to advocate such doctrine

make an unlawful assembly, every member of which is guilty of felony. Knowingly to permit the use of premises for such meeting is a misdemeanor.

Two months after this act passed over the veto, it was replaced by two laws. By the new sabotage act, whoever, with intent to interfere with any "agricultural, stockraising, mining, quarrying, fishing, manufacturing, transportation, mercantile, or building enterprise wherein persons are employed for wage," shall injure or threaten to injure "any property whatsoever" is guilty of felony. It is also felony to teach, or justify, or circulate matter, or organize, or assemble, to help advocate what is made unlawful by the act. By the new criminal syndicalism act whoever shall advocate "crime, sedition, violence, intimidation, or injury, as a means . . . of affecting or resisting any industrial, economic, social, or political change," or organizes, gives aid, or assembles with any group to do this, is guilty of felony.

Arkansas briefly enacts that it is unlawful to write, speak, or print anything intended to encourage injury to life or property without due process of law, or to spread what tends to destroy the government of Arkansas or of the United States by violence or unlawful means. Indiana enacts a preamble about the importance of liberty and free speech, the dangers from the advocacy of anarchy and sabotage, and the warning to be taken from recent occurrences in Russia. Therefore it is made unlawful to advocate the overthrow, by force or violence or by injury to property, "or by the general cessation of industry," of the government of the United States or of Indiana, or of all government. New Hampshire, by a brief, comprehensive act, forbids all advocacy of change in the form of federal or the state government, or interference with public or private right, by force or unlawful violence. The Connecticut law forbids speaking or exhibiting "any disloyal, scurrilous, or abusive matter," concerning the form of government of the United States, its military forces, flag, or uniforms, or anything intended to bring them into contempt, or foster opposition to organized government. West Virginia forbids all teaching "in sympathy or favor of ideals, constitutions, or forms of government . . . antagonistic to those now or hereafter existing under the constitution and laws of this state or the United States, or in favor of crime, violence or terrorism for economic or political reform." Oklahoma's statute adds "or for profit" to the list of forbidden ends.

With Arkansas and West Virginia perhaps the only exceptions, the violation of the criminal syndicalist statutes other than flag laws is a

felony. A second offense in West Virginia is a felony. Maximum fines range from \$1000 to \$10,000, and maximum prison terms from three years to twenty-five years. In nearly every case both fine and imprisonment are authorized. The heavier penalties are found in Rhode Island, New York, Pennsylvania, South Carolina, Ohio, Michigan, Illinois, Oklahoma and California.

Other legislation to offset syndicalist and revolutionary agitation includes laws relating to the use of foreign languages and laws establishing a constructive program of education in citizenship and American government. In addition to such laws already noted in this REVIEW, Pennsylvania in 1919 passed three statutes which provide for "instruction conducive to the spirit of loyalty and devotion to the state and national governments," in all the schools, and made special provision for instructing the foreign born in citizenship and government. An Oregon law, passed at the special session of the legislature in 1920, aimed especially at a Finnish radical paper, provides that: "It shall be unlawful for any person to print, . . . display, sell, or offer for sale any newspaper or periodical in any language other than the English unless the same contains a literal translation thereof in the English language of the same type and as conspicuously displayed."

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**Regulation of Social Diseases.** The effect of the war on public opinion and on the *mores* of the American people is most clearly reflected in the legislation on the subject of venereal diseases. Not many years ago, this subject was ignored by all classes of people, except in vulgar jest, not only by polite and conventional society but by most clear-thinking and well-intentioned minds. It was a subject to be spoken under a bated breath, and written about only in scientific treatises in foreign languages. Even in the medical profession, professional ethics made such diseases the sacred secrets of the physician's "confessional," and professional policy usually prevented the disclosure to the patient as well as to the public. Parental prudity and time-honored custom kept adolescents in the dark concerning the devastating nature of these diseases, and, contrary to the rule, the unknown was not feared. Although the contagious nature of these diseases became known to medical science after the establishment of their germ origin, they were not placed in the category of contagious and infectious diseases like small-pox and diphtheria. A few safeguards—the abolition



of the public drinking cup and the roller towel—were imposed in many states, but there prevention rested, while practical police methods in dealing with prostitution actually encouraged the spread of venereal diseases.

The power of the national government, under war time conditions, dispelled the former views as to the necessity of "the most ancient of professions," and demonstrated that an army of millions of men might be raised without subjecting the young men of the country to exposure to a terrible epidemic. The success of the war department undoubtedly encouraged the new legislation checking the ravages of venereal disease, and our state authorities display every indication of thorough-going coöperation with the United States public health service in clinics and propaganda.

Sixteen states (Colorado, Florida, Georgia, Iowa, Michigan, Montana, Nebraska, New Jersey, New York, North Dakota, Oklahoma, Oregon, South Carolina, South Dakota, Utah and Washington)<sup>1</sup> have passed similar laws covering the situation rather completely, providing for examination, reporting, and treatment of syphilis, chancroid, and gonorrhea. The Iowa law provides that physicians and hospital superintendents shall report, on forms supplied by the state board of health, every case of venereal disease which they discover in their practice, with a penalty attached for failure to do so and with a further penalty for the patient who gives false information concerning his previous history. The local board of health is given all powers, in relation to venereal diseases, already given to prevent the spread of other contagious, infectious, or communicable diseases. General publicity is alone excepted, and records are open to inspection only by the infected person, physicians, and public officers in performance of their official duties, and are to be destroyed at the end of one year after the disease has been pronounced cured. (Massachusetts<sup>2</sup> alone extends this period to five years.) Suspects may be examined,

<sup>1</sup> *Colorado Session Laws*, 1919, ch. 57; *Florida Session Laws*, 1919, p. 92; *Georgia Session Laws*, 1918, ch. 275; *Iowa Session Laws*, 1919, ch. 299; *Michigan Session Laws*, 1919, ch. 272; *Montana Session Laws*, 1919, ch. 106; *Nebraska Session Laws*, 1919, ch. 265; *New Jersey Session Laws*, 1918, ch. 253; *New York Session Laws*, 1918, ch. 264; 1919, ch. 40; *North Dakota Session Laws*, 1919, ch. 237; *Oklahoma Session Laws*, 1919, ch. 17; *Oregon Session Laws*, 1919, p. 407; *South Carolina Session Laws*, 1919, p. 30; *South Dakota Session Laws*, 1919, ch. 284; *Utah Session Laws*, 1919, ch. 52; *Washington Session Laws*, 1919, ch. 114; *Wisconsin Session Laws*, 1919, ch. 331.

<sup>2</sup> *Massachusetts Session Laws*, 1918, ch. 96.

quarantined, and disinfected, and the county supervisors are authorized to establish and maintain isolation and detention hospitals for infected persons. While certificates of freedom from venereal diseases may be given for proper purposes, they may not be issued except with safeguards against their use in solicitation and prostitution. Druggists and others, not licensed medical practitioners, are forbidden to prescribe or recommend drugs for treatment. Local boards of health in these states are also given authority to make rules and regulations for the enforcement of these provisions, and are required to cooperate with the state boards.

Missouri and New York<sup>3</sup> have established separate bureaus for these diseases. Missouri's law simply declares these diseases to be contagious and places them under the regulations of the state board of health, creating a separate division thereof, named "preventable diseases," including tuberculosis, child hygiene, and venereal diseases, with full powers for enforcing measures of prevention. New York has gone into more detail as to prevention measures, and vests their enforcement in the state board of health, creating therefor a bureau of venereal diseases.

Colorado<sup>4</sup> authorizes the erection of a state detention home for women, for the confinement and free treatment of women suffering with venereal diseases. An inspector or agent of the state board of health may order commitment of any female reported by a licensed physician, but the woman may demand trial and the district and county courts are given original jurisdiction in all cases under this act. Voluntary patients are admitted on application. Illinois<sup>5</sup> permits counties or cities to provide for segregation and treatment of venereal cases and maintenance of hospitals, sanitariums, and clinics therefor or departments for treatment in existing hospitals.

Another group of states (California, Connecticut, Delaware, Nebraska, New Hampshire, and Oklahoma)<sup>6</sup> have enacted similar but less detailed laws, providing for the examination of persons convicted on

<sup>3</sup> Missouri *Session Laws*, 1919, p. 372; New York *Session Laws*, 1918, ch. 342.

<sup>4</sup> Colorado *Session Laws*, 1919, ch. 60.

<sup>5</sup> Illinois *Session Laws*, 1919, p. 589.

<sup>6</sup> California *Session Laws*, 1919, ch. 165; Connecticut *Session Laws*, 1919, ch. 77; Delaware *Session Laws*, 1919, ch. 53; Massachusetts *Session Laws*, 1918, ch. 96; Nebraska *Session Laws*, 1919, ch. 265; New Hampshire *Session Laws*, 1919, ch. 163; Oklahoma *Session Laws*, 1919, ch. 17; New York *Session Laws*, 1919, ch. 40; South Carolina *Session Laws*, 1918, p. 890; 1919, p. 31.

charges of prostitution, and for reporting cases of venereal disease by physicians. Massachusetts and South Dakota<sup>7</sup> make compulsory the examination of inmates of all prisons, state, county, or city, and the treatment of cases found therein.

Two states (Michigan and New Jersey)<sup>8</sup> have enacted preventive measures in connection with foodstuffs. Michigan prohibits the employment of persons affected with infectious or venereal disease in bakeries, restaurants and other places manufacturing, preparing, or serving food or drink, and requiring the examination of employees of such establishments at the order of any local health officer. The same regulation governs cigar factories. New Jersey has the same prohibitions on handling milk or manufacturing milk products, and on persons engaged in nursing or the care of children or the sick.

Massachusetts<sup>9</sup> takes the further step of attacking the rule of medical ethics relating to secrecy in respect to venereal diseases, by authorizing physicians and surgeons to disclose information pertaining thereto to parents or guardians of any minor from whom the infected person has received a promise of marriage. This disclosure is optional and not mandatory, but, if given in good faith, cannot constitute a slander or libel. Maine and Oklahoma<sup>10</sup> go still further, and prohibit the marriage of infected persons, making it unlawful for such infected persons to fail to report to a physician for examination and punishing physicians for issuing false certificates of freedom from disease. Alabama<sup>11</sup> makes compulsory the examination of males before marriage and prohibits infected men from marrying.

One instance of the difficulties encountered by the national authorities in their campaign for public knowledge concerning these diseases, is to be found in the suppression of such knowledge by state laws against literature and pictures on "obscene subjects." Pennsylvania,<sup>12</sup> for instance, forbids the advertisement of treatment with no exception. Massachusetts<sup>13</sup> withdraws its prohibition on publishing and distributing such literature issued or permitted to be issued by the state and

<sup>7</sup> *Massachusetts Session Laws*, 1918, ch. 58; *South Dakota Session Laws*, 1919, ch. 284.

<sup>8</sup> *Michigan Session Laws*, 1919, ch. 25, ch. 353; *New Jersey Session Laws*, 1918, ch. 253.

<sup>9</sup> *Massachusetts Session Laws*, 1918, ch. 111.

<sup>10</sup> *Maine Session Laws*, 1919, ch. 41; *Oklahoma Session Laws*, 1919, ch. 17.

<sup>11</sup> *Alabama Session Laws*, 1919, p. 169.

<sup>12</sup> *Pennsylvania Session Laws*, 1919, p. 1084.

<sup>13</sup> *Massachusetts Session Laws*, 1918, ch. 237.

municipal authorities; and Connecticut <sup>14</sup> allows pictures showing the effects of venereal diseases upon order of a health board.

California, Kentucky, Utah, Virginia and West Virginia,<sup>15</sup> following the above-mentioned states in prohibiting treatment of venereal diseases by others than licensed physicians, specifically forbid the advertisement of remedies for syphilis or gonorrhea, or places or persons treating them except by boards of health.

Many of these states and some others have already evinced their willingness to enter into coöperation with the national government in enlightening the people and suppressing venereal disease. Arkansas, California, Indiana, Iowa, Montana, Nebraska, New Hampshire and New York have made appropriations for this purpose to their state boards of health, ranging in amount from \$5000 to \$50,000.

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<sup>14</sup> Connecticut *Session Laws*, 1919, ch. 329.

<sup>15</sup> California *Session Laws*, 1919, ch. 294; Kentucky *Session Laws*, 1918, ch. 174; Utah *Session Laws*, 1919, ch. 53, 54; Virginia *Session Laws*, 1919, ch. 373; West Virginia *Session Laws*, 1919, ch. 73.

## JUDICIAL DECISIONS ON PUBLIC LAW

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*Amendment to Federal Constitution—Meaning of “Two Thirds” of Each House of Congress Necessary for Proposal—Restraining State Governor from Submitting Amendment to Legislature for Ratification.* State of Ohio v. Cox (United States District Court, January 4, 1919, 257 Fed. 334). This was a taxpayers' action brought in behalf of the relator and other citizens of Ohio and of the United States to restrain the governor of Ohio from transmitting to the Ohio legislature for ratification the Eighteenth Amendment to the United States Constitution. The court first directs its attention to the question of its own jurisdiction to try this case and decides that that jurisdiction is lacking. This is true for the reason that the plaintiff has not shown that the necessary jurisdictional amount of \$3000 is involved in the case. The court also declares that this is not a proper case for the granting of injunctive relief. The governor of the state is not charged by the Constitution of the United States with the duty of transmitting the proposed amendment to the legislature for ratification. In so doing he acts quite informally and the plaintiff cannot allege that any injury which might possibly result to him from the final ratification of the amendment is due directly to the act of the governor. After the amendment is transmitted to the legislature, there is still an opportunity to bring pressure to bear to prevent its ratification by the Ohio legislature and there is the further possibility that the Ohio legislature and other legislatures may fail to ratify so that the injury feared by the plaintiff may never occur. The court then turns to the specific grounds on which it was alleged that the amendment was illegally proposed. The first of these contentions was that the amendment was proposed by a two-thirds vote not of the entire membership of both houses of Congress but a two-thirds vote merely of the members of both houses present at the time the vote was taken. The court decided that a two-thirds vote of a quorum of each house of Congress was the vote required by the terms of Article V of the federal Constitution. In

support of this view it cited the resolutions passed by the senate in 1861 and 1869 and by the house in 1899. It pointed out further that both the fourteenth and fifteenth amendments were proposed by two-thirds of the members present rather than two-thirds of the full membership. The court also disposed of the argument that the eighteenth amendment violates the tenth amendment by invading the reserved authority of the states. It points out that reserved powers which belong to the states are called reserved because they have never been surrendered to the federal government and that when the requisite number of states concur the Constitution may be so amended as to surrender to the central government additional powers.

*Amendment to Federal Constitution—Referendum.* In re Opinion of the Justices (Maine, 1919, 107 Atl. 673); *State ex rel. Muller v. Howell* (Washington, May 24, 1919, 181 Pac. 920). These two decisions present a square conflict of judicial opinion upon the interesting question whether or not a joint resolution by a state legislature ratifying an amendment to the United States Constitution is subject to popular referendum, like any other act of the legislature, under the constitutional provisions governing the initiative and referendum. The supreme court of Maine replied to a question of the governor that the joint resolution by which the Maine legislature had ratified the Eighteenth Amendment could not be referred to the people even though a petition for such referendum was duly filed. Two main reasons were given in support of this opinion. In the first place such referendum would be improper under Article V of the federal Constitution relating to amendments. The proposal and ratification of amendments to the United States Constitution is governed wholly by the provisions of that document. The states retain no discretion in the matter of the method of such ratification. The people retain no direct power to ratify an amendment, but the ratification must be made either by the legislature of the state or by ratifying conventions according as Congress may require the one or the other method. In the case of the Eighteenth Amendment, as in the case of its predecessors, ratification by state legislatures was specified when the amendment was proposed by Congress. Accordingly when the legislature of Maine passed its resolution of ratification that ratification was "complete, final, and conclusive" so far as that state was concerned.

It has been established by practice that a ratification once made by a state legislature cannot be rescinded by a subsequent legislature.

Ohio and New Jersey both attempted to withdraw their ratifications to the Fourteenth Amendment, and New York tried to withdraw its ratification of the Fifteenth Amendment. None of these attempts was successful. Equally fruitless would be any attempt on the part of the people of the state to withdraw the ratification passed in the regular way by the legislature of the state. In the second place the joint resolution in question is not subject to referendum under the provisions of the constitution of Maine relating to the initiative and referendum. It has been established that the referendum is applicable only to legislation. "This resolution, ratifying the proposed constitutional amendment, was neither a public act, a private act, nor a resolve having the force of law. It was in no sense legislation. It was not signed by the Governor, nor could it have been vetoed by him." It is, therefore, in the judgment of the court not within the scope of the referendum as that system is defined in the constitution of the state. This opinion is in accord with that of the supreme court of Oregon in the case of *Herbring v. Brown* (180 Pac. 328).

In the *Howell* case the supreme court of Washington took the opposite position upon each of the two points which led the Maine tribunal to its final conclusion. It held, first, that the joint resolution of ratification passed by the state legislature was a legislative act within the meaning of the initiative and referendum provisions of the state constitution. Those provisions should be construed liberally to accomplish what was in the minds of the framers, namely, the possibility of referring to popular vote every act of the legislature with the exception of those specially mentioned as being withdrawn from the scope of the referendum. The act of the legislature in ratifying the Eighteenth Amendment was legislative in character and should be regarded in the same light as any other legislative act. In fact, doubt is expressed as to the competence of the legislature to ratify except by an act or bill, or by a resolution having the legal character of an act or bill, since the court finds in the state constitution no power granted to the legislature to act in matters of legislation other than by act or bill. This point assumes, of course, that the act of ratification is a matter legislative in character.

Secondly, the court finds nothing in the amending clause of the federal Constitution to stand in the way of the submission of the resolution of ratification to popular referendum. It is admitted that "if we are to stand upon the word 'Legislature,' if that word, and that alone, is the Alpha and Omega of our inquiry—it follows that the controversy

is at an end; but we are cited to no instances where a great question involving the political rights of a people has been met by such technical recourse; where any court has so exalted the letter and debased the spirit of the law." The court regards the provision in the federal Constitution relating to amendments, not as a hard and fast stipulation of the precise manner in which ratification by the states must be achieved, but rather as a "reservation in the several states of the right to express their legislative will in the manner in which they had then provided, or might thereafter provide, and, when so regarded, as a compact between the states and the federal government." The idea that the clause providing for the ratification of amendments by "legislatures" should be construed to mean "legislatures" in the narrow sense of the term, or legislative assemblies, is nullified by the fact that at the time of the adoption of the Constitution of the United States some of the states did not have legislative assemblies. Such a view, further, would deprive a state entirely of the privilege of ratification in case it should so change its constitution as to abolish its legislative assembly entirely and place the duty of performing legislative functions directly and exclusively in the hands of the people. It is more reasonable to assume that when Article V of the federal Constitution uses the word "legislature" in this connection it means the supreme legislative authority of the state whether exercised by legislative assembly, convention, or any other method which might be adopted by the people of the states. This view is held to be in conformity to the views of the framers of the federal Constitution who believed that "the theory of our political system is that the ultimate sovereignty is in the people, from whom springs all legitimate authority."

*Congress—Legislative Powers Derived from Treaties—Protection of Migratory Birds.* United States v. Samples (United States District Court, July 2, 1919, 258 Fed. 479); United States v. Selkirk (Same, July 14, 1919, 258 Fed. 775); United States v. Thompson (Same, June 4, 1919, 258 Fed. 257); United States v. Rockefeller (Same, August 30, 1919, 260 Fed. 346). These cases all raise the question of the constitutionality of the Migratory Bird Act of July 3, 1918. This act was passed to give effect to a treaty between England and the United States signed December 8, 1916. The act provided that it should be unlawful to hunt, kill or capture any of the migratory birds mentioned in the treaty except in the manner permitted by regulations promulgated by the secretary of agriculture. The contention in each of these cases was that Congress



was without constitutional authority to pass the act in question and in each case the court sustained the validity of the law. It was urged upon the court that the Migratory Bird Act passed by Congress in 1913 had been held unconstitutional not only by the United States district courts but by the supreme courts of two of the states. (*United States v. Shauver*, 214 Fed. 154; *United States v. McCullagh*, 221 Fed. 288; *State v. Sawyer*, 113 Me. 458, 94 Atl. 886; *State v. McCullagh*, 96 Kans. 786, 153 Pac. 557.) In those cases it was held that the protection of migratory birds was not a subject confided to the authority of Congress by any express delegation of power nor could the authority to deal with that subject be implied from any admitted congressional power. The question is squarely raised, therefore, whether or not Congress may exercise legislative power in carrying into effect the provisions of a treaty with a foreign nation when that legislative power could not be exercised otherwise in accordance with the terms of the Constitution.

In the *Thompson* case the court points out that Congress enjoys the authority to carry into effect by appropriate legislation the provisions of treaties with foreign countries. It reviews the authorities upon the question whether or not there are any constitutional limits upon the treaty-making power and reaches the conclusion that the treaty-making power, together with the authority of Congress to carry out the provisions of treaties, is not subject to all of the limitations which rest upon the usual legislative authority of Congress. So to limit the scope of the treaty-making power would result in preventing the United States from making treaties upon many important and necessary problems. This is true because in general the states retain legislative authority over their local affairs but do not retain any treaty-making authority in respect to those affairs. Consequently if the national government cannot make treaties in respect to these internal affairs of the states, it might frequently follow that the federal government would be powerless to protect the rights of citizens in respect to matters regarding which reciprocity of treatment would be expected by foreign powers. The court does not believe that the tenth amendment can be urged as a limitation upon the treaty-making power without nullifying that power. While the court enjoys the authority to invalidate a treaty or a law passed in pursuance of a treaty in those cases in which there is a clear violation of the Constitution, that power should not be exercised except in the clearest possible cases.

The Samples case follows a line of reasoning similar in substance to that just noted and discusses in addition the propriety of extending the treaty-making authority to the regulation of migratory birds. It holds this to be a proper subject of international agreement, and supports this fact by the citation of numerous treaties in which the United States government has dealt with the protection of seals and fish and other analogous topics. The Rockefeller case emphasizes and upholds the power of the national government through the proper agencies to make treaties relating to subjects within the scope of the reserved power of the states.

*Foreign Languages—Teaching in Public Schools—Constitutionality of Statute Forbidding.* Nebraska District of Evangelical Lutheran Synod v. McKelvie (Nebraska, December 26, 1919, 175 N. W. 531). A Nebraska statute of 1919 made it a misdemeanor for any person to teach in any private, denominational, parochial, or public school any subject to any person in any language except English. It allowed the teaching of foreign languages as languages only to pupils who have passed the eighth grade. The plaintiffs contended that this statute abridged various rights of liberty and property which are protected both by the state constitution and the Fourteenth Amendment. After examining the statute in the light of the probable intention of its framers, the court construed it in such a way as to destroy the force of some of the objections urged against it. The schools to which the act applies are those which present a course of study such as that prescribed for the public schools, and attendance upon which would satisfy the requirements of the compulsory school law. The law, therefore, does not prevent parents or religious societies from giving children who are attending these schools special instruction in foreign languages in addition to their prescribed school work. Nor does it make unlawful the teaching of foreign languages to adults who are not attending the public schools. In short the act aims to make sure that the child gets his elementary public school education, or the lawful equivalent of it, in English, and makes no effort to prevent his getting in addition such instruction in a foreign language as he or his parents deem desirable. Thus construed the statute violates no constitutional rights. It is a natural and logical extension of the principle incorporated in the compulsory school law. It is the right of the state to make sure that its children "may know and understand their privileges, duties, powers, and responsibilities as American citizens." To this end it is proper

and lawful to require that elementary instruction shall be given in English alone since experience during the late war clearly showed that in the absence of such a requirement whole communities existed in the state in which English was neither spoken nor understood and in which there was no clear comprehension on the part of the citizens of American institutions or ideals.

*Municipal Corporations—Power of Commissioners to Increase Their Own Salaries.* Kendall v. Stafford (North Carolina, November 19, 1919, 101 S. E. 15). The city of Greensboro, North Carolina, under a special act of the legislature of 1911 adopted the commission form of government. The charter of the city fixed the salaries of the commissioners at the outset. The charter also provided that "the governing body of any city may by ordinance fix the salary of the mayor of such city, or heads of departments, or other officers." In pursuance of this provision the commission voted to themselves an increase of salary of \$600 per year. This action was attacked as being beyond the lawful authority of the commission. The court decided that the commissioners had no power to increase their own salaries. It pointed out that "the public policy of the state, found in the statutes and judicial decisions has been pronounced against permitting one to sit in judgment on his own cause, or to act on a matter affecting the public when he has a direct pecuniary interest, and this is a principle of the common law which has existed for hundreds of years." This policy should be strictly enforced in the interest of the public, and applied to the defendants' case it would vitiate their action. The fact that the terms of the charter seem quite clearly to authorize the action taken is disposed of by the court by saying: "The defendants come within the letter of the statute, but not within its spirit, and a consideration of the whole statute leads to the conclusion that their authority over salaries relates to those of other officers and not of their own." The view, however, that under the clause in question the commissioners acquired the authority to increase the salaries of all municipal officers except themselves seems hard to reconcile with the further argument of the court that the power to "fix" salaries is the power to "make permanent something that is unsettled" and does not include the power to increase a salary which has been established. The case is interesting as one in which the letter of the law is made to give way to the spirit of the law or to considerations of "public policy."

*Municipal Corporations—Selling Public Office to Highest Bidder.* City of Corpus Christi v. Mireur (Texas, Court of Civil Appeal, June 18, 1919, 214 S. W. 528). The city of Corpus Christi, under authority of a special act of the legislature of Texas, advertised for bids in the newspapers from persons or corporations who desired to hold the office of city treasurer. The provisions of the statute in question authorized this unique procedure and provided that the city council should choose the city treasurer who was in the discretion of the city council the highest and best bidder. The best bidder was declared to be the one who offered the highest rate of interest on daily balances and the bond of the highest value. He was to hold office for two years and was to receive a salary of \$5 per year. Suit was brought to annul the contract which the city had entered into with a local bank. This bank had been elected treasurer of the city in spite of the fact that another bank had offered a higher rate of interest on city deposits. The court decided that the process of offering a public office to the highest bidder was repugnant to every sound principle of democratic government. It expressed its judgment upon this point in no uncertain language. "No such law," it declares, "could be sustained under our constitution which would authorize or permit the sale or farming out of an office." Furthermore, "No constitution or statute has ever contemplated that a corporation should be appointed to and exercise the powers of any office. It could not qualify as an officer or perform the functions thereof. The absurdity of a corporation being the officer of another corporation is apparent on its face." The court therefore proceeds to construe the statute under discussion in such a way as to make it provide for the appointment upon the basis of competitive bids not of the treasurer, but of a depository for public funds. By this somewhat drastic rule of construction the court avoids the necessity under which it feels it would otherwise be placed of declaring the act void. Relief was granted in this case, however, on the ground that the council had not chosen the highest bidder as a city depository.

*Naturalization—Cancellation of Certificate—Meaning of "Anarchist."* United States v. Stuppiello (United States District Court, September 10, 1919, 260 Fed. 483). The defendant, a native of Italy, was naturalized in 1915. In 1918 he was arrested by the bureau of immigration on a warrant charging him with being an anarchist. He admitted that he did not believe in the existing form of government in the United States, that he did believe in anarchy, and that he had held these

views for six or seven years. An action was started to cancel his certificate of naturalization on the ground that it had been fraudulently procured. The defendant resisted this action and based his defense upon the fact that while he believed in anarchy he did not believe in the overthrow of government by violence but was merely an adherent of "philosophical anarchy." The court ordered the cancelation of the defendant's certificate. The naturalization laws require an applicant for citizenship to declare that he is not an anarchist. The word "anarchist" is used without any qualification. Congress must have intended to include within its meaning "all aliens who had in mind a theory of anarchy" as well as those who frankly advocated violence. The court expresses the belief that "the philosophical anarchist who exploits and expounds his views is none the less dangerous to the welfare of the country than the anarchist who believes in overthrow—or destroying the government by force or violence." If the defendant at the time of his naturalization had expressed his disbelief in organized government he would not have been granted citizenship. Since, however, he held these views at that time it follows that his certificate of naturalization was procured by fraud and should be canceled.

*Obligation of Contracts—Change in Character of Creditors' Remedy.* In re Davis (Nebraska, July 16, 1919, 173 N. W. 695). A Nebraska statute of 1917 provided that any debtor who owed not less than \$50 nor more than \$1000 to not less than three creditors might file in a municipal or county court a petition containing his creditors' names and addresses and the respective amounts owing to each and asking the court to fix the amount of and the time when payments on these debts should be made. The creditors were to be notified of this proceeding by registered mail and were to be allowed an opportunity to be heard in respect to their rights. Davis petitioned in accordance with this act. All of his debts were incurred before the act was passed and certain of his creditors alleged that the act as applied to them impaired the obligation of contracts. The court upheld the validity of the act against this objection. In its judgment the statute did not relieve the debtor of any contractual obligation but merely altered the nature of the remedies available to the creditors. Payment in full was required for all the debts and the debtor was always subject to the order of the court. In case of the failure of the debtor to comply with the order of the court the protection from attachments or judgments which he enjoyed under the act was at once forfeited. This change in

the nature of the creditors' remedy, the court did not regard as unreasonable. The public takes an interest both in the debtor and the creditor and it is in accord with the public interest to protect the small debtor from the demands of creditors who desire to subject him to immediate payments in full or bankruptcy. The court concludes that it is more reasonable that the debtor should not be sacrificed in this way but should be given a reasonable opportunity to pay and that all creditors should recover their debts rather than that one, or at most only a few, should recover. The act therefore does not so unreasonably change the remedy available to creditors as to amount to an impairment of the obligation of contracts.

*Police Power—Regulation of Out-door Advertising.* In re Opinion of the Justices (Massachusetts, June 25, 1919, 124 N. E. 319). An amendment to the constitution of Massachusetts provides that "Advertising on public ways, in public places and on private property within public view may be regulated and restricted by law." The supreme court here renders its opinion at the request of the governor upon the validity of five proposed statutes drawn in pursuance of this amendment and intended to obviate the evils of obnoxious out-door advertising. The general rule is laid down that the power conferred to "regulate and restrict" is not the power "to prohibit utterly and without bound but only to establish reasonable regulations." Accordingly the bill prohibiting all advertising within three hundred feet of any public building, memorial, public park, way, or other public place would be void as a complete prohibition rather than a regulation and also because it restricts such advertising as may not be within public view, thereby exceeding the authority conferred by the amendment. A special betterment tax of twenty-five cents per square foot annually upon all signs and billboards to be used in maintaining and improving the public way near which the signs are displayed is held invalid as an attempt to levy a special betterment when "the provisions of the act do not constitute a betterment." So also a bill is unconstitutional which seeks to confer upon municipal officers unlimited discretion in granting or refusing the licenses which it is proposed to require those erecting signs and billboards to secure. Such an act amounts to prohibition rather than mere regulation. It is, however, permissible to confer upon cities the right to require such licenses under reasonable conditions, to compel the payment of a special license fee, and to revoke the license for noncompliance with the conditions thereof.

The opinion rendered regarding these various bills would seem to raise the question whether the amendment to the constitution of Massachusetts in question has actually conferred any important powers not hitherto comprised within the general police power of the state.

*Taxation—Public Purpose—State Operation of Grain Elevators, Mills, and Packing Houses.* *Scott v. Frazier* (United States District Court, June 14, 1919, 258 Fed. 669). This is a taxpayers' action attacking the constitutionality of two recent amendments to the constitution of North Dakota authorizing the state to engage in the business of operating terminal grain elevators, mills and packing houses. The plaintiff seeks to restrain the paying out of funds from the state treasury under authority of these amendments and also the issuance by the state of bonds for the same purpose. Since this action is brought in a United States district court it is necessary to establish the jurisdiction of this court to hear the case. The court here decides that there is absence of proper jurisdiction to proceed. It fails to find that the plaintiff has alleged pecuniary injury to himself amounting to the \$3000 necessary to establish the jurisdiction of the court. Doubt is also expressed as to the propriety of allowing a taxpayers' action against the state itself. The court points out that to do so is a very different thing from allowing a similar action to restrain a municipal corporation from the abuse of its corporate powers.

The court then proceeds to consider the question of the actual propriety of the expenditures and bond issues which are attacked by the plaintiff. The constitutional issue raised here is whether or not the money spent under authority of the two constitutional amendments is spent for a public purpose in the sense in which that term is used in the law of taxation. If the purpose in view is private rather than public the amendments and the expenditures made thereunder will fall by reason of violation of due process of law as well as under the well-known rule in the case of *Loan Association v. Topeka* (20 Wall, 655). The court concludes that the taxation contemplated is for a public purpose. It recognizes the difficulty of applying hard and fast definitions to the problem of public purpose in taxation and points out that the purposes which at one time were generally regarded as private have now come to be regarded as public. The court declares in discussing this point: "No judge can investigate judicial decisions rendered during the past ten years without being impressed with the rapid extension of state activity into fields that were formerly private. The

twilight zone that separates here permissible from forbidden state action is broad. Business which will seem to one court to be public will seem to another to be private. . . . Thus 'can' succeeds 'can't' in this field of law so rapidly that one can hardly tell the word he is looking at." The court indicates the importance to the state of North Dakota of breaking down the existing dependence of the agricultural interests of the state upon the marketing facilities of Duluth, Minneapolis and St. Paul. The purpose which will be subserved by the amendments in question and the expenditures under them will be the creation of a self-sufficiency in matters of agricultural development which will stimulate diversified farming and check the present tendency toward a system of agriculture which destroys the soil fertility. A purpose so intimately connected with the general welfare of the state cannot in the judgment of the court be held private.

*Woman Suffrage by Legislative Grant—Applicability of Referendum.* In re Opinion of the Justices (Maine, August 28, 1919, 107 Atl. 705). In response to a request of the governor, the supreme court of Maine gave an advance opinion upon the question whether or not the act of March 28, 1919, granting women the right to vote for presidential electors could legally be submitted to popular referendum under the initiative and referendum provisions of the state constitution. Petition calling for such referendum had been duly filed. The court decided that the presidential suffrage law was subject to referendum in the same way in which any other law passed by the legislature of the state of Maine is subject to referendum. The federal Constitution stipulates that each state shall appoint presidential electors in such manner as the legislature thereof may direct. The court declared that the "plain meaning is that each state is thereby clothed with the absolute power to appoint electors in such manner as it may see fit, without any interference or control on the part of the federal government." Any acts or resolves of the state legislature regarding the choice of presidential electors must be passed and become effective in accordance with the constitution of the state like all other acts and resolves having the force of law. While the function which the state legislature performs in ratifying an amendment to the federal Constitution is a peculiar function, not legislative in character, but an act done as the special agent of the national government, this is not true of the function of the state legislature in regulating the choice of presidential electors. In the latter case the legislature enjoys no independence of the consti-



tution of the state but is rather exercising its natural and ordinary law-making power. It follows, therefore, that the presidential suffrage act forms no exception to the acts of the legislature which are subject to referendum by the people.

*Woman Suffrage by Legislative Grant—Presidential and Municipal.* Vertrees v. State Board of Elections (Tennessee, July 26, 1919, 214 S. W. 737). A Tennessee statute of April 17, 1919, granted to women the right to vote for presidential electors, municipal officers and upon all questions submitted exclusively to the vote of municipalities. This case arose from a petition for an injunction to restrain the election officials of the state from putting the statute into effect. It was alleged that the act was unconstitutional, inasmuch as the state constitution fixed the qualifications for voting and limited the suffrage to male citizens. The supreme court of the state upheld the validity of the act. It called attention to the fact that the constitution of Tennessee, while providing that all male citizens shall have the right to vote, also provides that "the election of all officers, and the filling of all vacancies not otherwise directed or provided by this constitution, shall be made in such manner as the legislature shall direct." Under the authority of this clause the court holds that the legislature could legitimately confer the right to vote upon women for all offices which are not mentioned in the state constitution. It declared that wherever the constitution stipulated that an election should be participated in only by "qualified electors" that only male citizens could enjoy the privilege of voting. The officers of municipalities are not mentioned directly in the constitution of Tennessee nor is there any provision in that document respecting the qualifications of voters for presidential electors. It follows accordingly that the right to vote in these elections could be conferred by the legislature.

It is interesting to note that the court in discussing the legislative grant of presidential suffrage does not refer to the clause of the United States Constitution which provides that presidential electors shall be chosen as the legislatures of the several states shall direct. It confines its consideration of the constitutionality of this portion of the suffrage act of 1919 to questions arising under the state constitution, with the exception that, in parenthesis, as a sort of afterthought, it states that the qualifications for voting for presidential electors could "doubtless not be regulated by the state constitution."

This act was attacked upon a second ground quite different from that just mentioned. Male voters in Tennessee are required to pay a

poll tax and present the evidence of such payment before casting their ballots. The woman suffrage law, while providing that women might be required to pay the poll tax in all cases in which men were subjected to this burden, did not actually levy the tax upon women. It was urged that this was a discrimination between the sexes which should render the law invalid. The court disposes of this contention, however, by saying that the discrimination, if any exists, arises from the fact that the statute imposes the payment of the poll tax upon men rather than from the fact that the woman suffrage law fails to make a similar imposition upon women. In other words, the discrimination arises from the act which levies the discriminatory burden rather than the act which fails to impose the same burden upon an exempt class. It was further pointed out that the law itself did not specifically require separate ballot boxes for men and women. The court held that if the law had failed to provide any authority under which separate ballot boxes could be provided, it would be unconstitutional and subversive of the purity of elections; but the court finds that the state board of elections has broad enough powers to permit it to provide separate ballot boxes and holds that this is sufficient authorization to meet this difficulty. A dissenting opinion was filed in this case based upon the alleged discrimination due to the exemption of women voters from the payment of the poll tax.

*Workmen's Compensation Act—Replacing Right of Direct Insurance by Compulsory State Fund. Effect on Existing Contracts of Indemnity. Thornton v. Duffy (Ohio, December 31, 1918, 124 N. E. 54).* Under the Ohio Workmen's Compensation Act of 1913, employers could elect to compensate injured employees either directly or through some mutual association. The plaintiff had availed himself of this privilege of direct insurance and in pursuance of this policy had entered into a contract of indemnity with a life insurance corporation. In 1917 an act was passed requiring all employers to contribute to the state fund, out of which compensation for all industrial accidents should be paid, and revoking all authorization previously granted for the establishment of private systems of compensation. It is held in this case that it is within the constitutional power of the legislature of Ohio to make the payments to the state fund compulsory, that such a law is an exercise of police power by the state, and that therefore the obligation of the plaintiff's contract of indemnity with an insurance corporation was not impaired thereby.

## FOREIGN GOVERNMENTS AND POLITICS

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**Soviet Government in Russia.** The Russian Socialist Federal Soviet Republic was proclaimed by the Third All-Russian Congress of Soviets in November, 1917, shortly after the Bolshevik party had overthrown the Kerensky government by the force of arms. Eight months later, the Fifth All-Russian Congress adopted a constitution. Since it was the party of Lenin and Trotzky that had invented the slogan "all power to the soviets" and changed Russia from a prospective democracy to a soviet republic, American public opinion came to identify the soviet form of political organization with bolshevism and all the policies it stands for, including the dictatorship of the proletariat, and nationalization all along the line of economic life. However, most observers who have since come out of Russia agree on drawing a distinction between sovietism and Bolshevism. Jerome Davis says: "It must always be remembered that the Bolsheviks are merely one party, but that the soviets are a form of government." For instance, the Fourth Extraordinary Congress of the Council of the Workmen's, Peasants', and Cossacks' deputies, the congress which met in March, 1919, and performed the dismal task of ratifying the Brest-Litovsk treaty, was composed of 1084 delegates, who were divided among no less than nine parties, the bolsheviks possessing a safe majority. It would therefore seem legitimate to discuss the novel form of political organization exhibited in the soviet system on its own merits, disregarding as far as may be the peculiar uses to which the Bolshevik party has put the instrumentalities furnished by the new constitution.

The Soviet Republic is a hierarchy of soviets from the village soviet and the city soviet at the bottom to the All-Russian Congress of Soviets at the top. The smallest unit of organization of the peasant population is the village commune, which elects at a meeting of all working inhabitants, a village soviet. All village soviets in the same township (*volost*) elect a township or *volost* soviet. All the *volost* soviets in a particular county or *uyezd* choose delegates to a county or *uyezd* soviet ?

at the rate of one delegate for every 1000 inhabitants. The next highest body is the provincial soviet, which serves as the point of juncture of the representatives of the rural and urban populations. The rural delegates are sent either by the county soviets or else directly by the township soviets, at the rate of one delegate for each 10,000 inhabitants. The urban delegates are sent by the city soviets at the rate of one delegate for each 2000 voters. In addition to being represented in the provincial soviet, each city soviet is also given direct representation in the All-Russian Congress of Soviets, at the rate of one delegate for each 25,000 voters. The remaining members of the All-Russian Congress of Soviets are sent by the provincial soviets at the rate of one delegate for each 125,000 inhabitants. The All-Russian Congress, which is the highest authority in Russia, meets at least twice a year and elects from all parties on the basis of proportional representation, a central executive committee of 200. The latter is permanently in session, and is the highest authority between sessions of the All-Russian Congress. It elects the Council of People's Commissars or responsible ministers.

It is obvious that in the Soviet Republic the industrial workers are a privileged class. Of course it would be unwarranted to draw from the foregoing the conclusion that they are overrepresented exactly in the ratio of five to one, since the constitution speaks in terms of population when it deals with the rural population and in terms of voters when referring to the urban population. Yet assuming that two-fifths of the population (including women) vote, 2000 male and female urban voters who send one delegate to the provincial soviet would represent a population of only 5000; whereas of rural inhabitants, it takes 10,000 to send a delegate. Moreover, the political weight of the urban population is further enhanced by their double representation in the All-Russian Congress of Soviets: directly by the delegates from the urban soviets, and indirectly through the delegates of the provincial soviets.

Doubtless the feature of the soviet system of the greatest interest to us is the recognition given to the principle of representation by occupation rather than by geographic unit in all but the highest levels of the soviet pyramid. To get an idea of the typical urban soviet let us assume that in an American town all workingmen and professional men are organized either by trade or by workshop; further, that each trade or workshop sends one or more representatives in proportion to membership to a labor council; and finally, that this labor council is

the governing body of the town. We at once perceive that a body so constituted differs from our municipal council in two important particulars. First, the suffrage is restricted to mere "producers," since those who derive a livelihood from the ownership of property are automatically excluded; and second, that the "aldermen" come from occupational groups rather than from residential groups such as our town wards.

The rural soviets are similarly constituted, although the adherence to the occupational principle is partly obscured by the occupational homogeneity of the rural population. The village, the *volost*, and *uyezd* soviets are peasant organizations. Even the provincial soviet, which, as said above, is the juncture point of the rural and urban representations, tries to preserve as far as possible the same group lines. To this end it is organized by sections: peasants, workers, soldiers, and Cossacks (in the regions inhabited by the latter). Naturally, only the first two are of general importance. Each section elects from its membership five officers who direct the business of the section. The officers of all sections jointly elect the officers of the provincial soviet. The latter, together with an executive committee which is elected by the general assembly, constitute the executive arm of the provincial soviet. Higher up than the provincial soviet the geographic principle comes fully into its own: the All-Russian Congress of Soviets is a body no less geographical than the Congress of the United States.

It is not strange that revolutionary Russia should show an aversion for the western forms of democracy. Half a century ago, when Russian social thought was first formed, we find that trend already dominating. On the one hand, the conservative Slavophiles congratulated themselves that the Russian people were not a "political" people like the nations of the "rotten West." On the other hand, the revolutionaries of that time were equally afraid of the forms of political democracy, and demanded the convocation of an assembly of representatives of the peasant communes to give to the people "Land and Freedom." They were loath to take chances with a constitutional convention or a parliament elected on a mixed social basis after the manner of Western Europe, for fear that the propertied classes might turn the whole matter to their own account.

The revolutionary thinkers of subsequent generations succeeded in overcoming this dread of political democracy. Indeed, they even went so far as to place reform of government on parliamentary lines at the head of their demands, while at the same time extending an invita-

tion to the bourgeoisie to join in the struggle against Tsarism. However, after the unsuccessful revolution of 1905-06, the anti-democratic sentiment revived. This was partly because no good was any longer anticipated from a participation in government by a bourgeoisie which had shown itself during those fateful years only too ready to compromise with autocracy; and partly because the radical thinkers of Western Europe—the syndicalists, gild socialists, and others—had likewise become disillusioned with democracy. Many such radicals who before considered democracy as the very breath of their nostrils, now see in it an instrument which readily lends itself to plutocratic designs, and which, moreover, the popular masses can never expect to use with advantage.

These critics center their attention on the mode of representation in government current in a democracy. They question whether in our differentiated modern society a truly representative government may be reared on a basis of an economically amorphous mass of voters who are united by no other bond than residence in the same geographic locality, but are separated by the fundamental differences which flow from difference in occupation. They further maintain that our "mixed" democracy can benefit only those who are adept at "fishing in muddy water"—the professional politician and the capitalist. The remedy which they propose is that governing bodies should represent not an amorphous body of constituents residing in a particular area, but groups united by real interests—economic or occupational groups. The Soviet constitution, as we saw, is reared on the same principle. So much for the intellectual roots of sovietism.

The broad masses of the Russian people had still a better ground for doubting the western forms of democracy. For several centuries the peasants had practiced a form of self-government in their land communes which lived up to the specifications of the radical thinkers of today. No one but peasants had a right to take part in the government of the commune—neither the landlord nor the merchant nor the professional man who lived in the neighborhood. The commune constituted the peasant's little world, and in this little world the only sort of grouping for the purpose of government which he knew was of course the one where all people in the same social and economic station governed themselves without the admixture of outsiders.

When, during the revolution of 1905-06, the workingmen of Petrograd and Moscow and other cities organized into soviets for the purpose of fighting the autocracy, the system of representation which

they chose was the natural one of trade and shop representation. The Putilov works sent so many delegates, the Obukhov works so many, and so forth. The soviets which came into existence after the revolution in March, 1917, were built on the same model, excepting that delegates from the soldiers were added.

At first the workingmen looked upon the soviets as mere watchdogs for the revolution over the provisional government, although, even then, the soviets were the only recognized authority in the country. The ministers of the provisional government held the offices and issued the orders; but the soviets decided whether or not those orders should be carried out. Still, for six months after the revolution, the powerful soviets were content to wait until the constitutional convention met to decide what should be the form of government in Russia. That convention was, according to plan, to be chosen on the basis of the widest franchise, but by geographic districts like similar bodies in the democracies of the West. However, under the constant prodding by the anti-democratic Bolshevik leaders, whose propaganda was favored by the flow of events, the Petrograd and Moscow soviets and later the All-Russian Congress of Soviets turned their backs upon the democratic ideal for Russia and voiced the slogan "All power to the Soviets." In January, 1918, when the long deferred constitutional convention at last met, it was forcibly dissolved by the new soviet régime. Sovietism and bolshevism have triumphed together; and on the whole, the masses of the Russian people, who had never developed a feeling for democracy in our sense of the word, seem to be in a fair way, as far as our scant information goes, to become adjusted to the soviet form. The political slate was clean. On it the Bolsheviks have quickly written the word "soviet." And "soviet" it stays for the present.

We have consciously tried to confine this paper to a bare exposition of facts and trends. We have not touched at all on the economic program which the Bolshevik party is carrying out through the agency of the soviets. No one who cares anything for whatever scientific reputation he may possess will venture at this distance and at this time to say what actually is the working of Russia's political experiment. The following observations may, however, not be unwarranted.

The soviet system seems to offer excellent opportunities for the party in power to maintain itself permanently in power. The representatives to the soviets are not elected for a term but are subject to recall by their constituents at any time. That has an air of a perfect popular

control, yet it would seem that the very fact that elections to the various soviets do not take place simultaneously all over the country, but haphazard, ought to enable the party in power to concentrate its whole influence on those localities where elections are held and defeat the opposition in detail. Under a system of general elections at a fixed date a government would enjoy no such advantage over the opposition. This may be one cause of the success of the Bolshevik party in remaining in power.

Representation under the soviet system is far less direct than with us. The American citizen sets up three out of the four pillars of the national government, namely representative, senator and President. Only the Supreme Court is beyond his reach. In Russia peasant citizens select a village soviet, which selects representatives for the *volost* soviet, which elects representatives for the provincial soviet, which selects representatives for the All-Russian Congress, which selects representatives on the central executive committee. Theoretically this repeated distillation ought to bring to the fore men of force and brains. It is hard to see how the popular spell-binder, hand-shaker, back-slapper or baby-kisser would get to Moscow as frequently as he gets to Washington. On the other hand, the four extra stages intercalated between the voter and the national representative give a good opportunity for the commissars of the government of the time being to apply influence or pressure to deflect these bodies farther and farther away from the people's will. It is obvious that unless the principle of proportional representation is strictly adhered to at every stage, the minority strains must disappear from the skein and the central executive committee would be composed entirely of the majority party.

Theoretically the soviet system need not exclude deputies of the bourgeoisie. Nevertheless it is not easy to fit them into such a system, even though there be no thought of dictatorship of the proletariat. Would they be a single group or a sub-group as financiers, manufacturers, contractors, merchants and investors? Or would they have a group according to their investment interest, e.g., the Missouri Pacific, the U. S. Steel, traction, water power, etc.? They might be represented according to their activity, but it is likely that more and more their representation would be according to their properties or forms of property.

If we find it next to impossible to fit the bourgeoisie into the soviet system, the soviet constitution itself has shown a way for utilizing in legislative counsel state-building talent outside of the recognized



occupational groups of laborers, peasants and soldiers. As noted above, each provincial soviet is grouped in two or more occupational sections. Each section is authorized to add to itself in an advisory capacity up to one-fifth of its membership from among "experienced and necessary workers." A way is thus opened for the "expert" to influence government at the source. Of course, in addition, he can make his influence felt as an official and employee of the soviet government. Whether the atmosphere of domination by the manual laborer, which is inevitable under the soviet régime, is conducive to bringing the best existing talent into the service of society and to stimulating it to the greatest exertion, is quite another matter.

E. A. ROSS and SELIG PERLMAN.

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**Proportional Representation in Ireland.** In January, 1919, a successful trial of proportional representation was made in the municipal elections of Sligo, and in the following July a local government (Ireland) act extended the system to all Irish municipal elections. The form employed is the Hare plan, the "single transferable vote," as it is usually called in the United Kingdom. On January 15, 1920, the first general trial of the new scheme was made, when elections were carried out in 127 Irish municipalities. The testimony of all elements is that the system worked very satisfactorily. The *Irish Times* (Unionist) says that proportional representation has "come to stay," and expresses the conviction that the early future will see the adoption of the system for municipal and parliamentary elections throughout the United Kingdom. The Belfast *Irish News* (Nationalist) says: "Proportional representation has been justified everywhere. We shall not quarrel with the verdict in any city or town, however we may regret some of these verdicts. In a self-governed Ireland we would have all popular contests decided on the same principle, and we cannot praise the new voting system any higher when that avowal has been made." The *Evening Telegraph*, representing the suppressed *Freeman's Journal* (Sinn Fein), says in similar vein: "The result of the elections has not only justified supporters of proportional representation, but has converted to their view the great mass of the electorate. The system did not prove impracticable when tried for the first time on the national scale, nor did it tax too severely the intellectual energies of the voters or the officials."

Errors and delays were few, and in the city of Dublin especially, where there were 150 candidates for 80 seats, the town clerk and his staff did their work with noteworthy expeditiousness and accuracy. Although no special steps were taken to instruct the voters, and notwithstanding the heavy proportion of newly enfranchised women in the electorate, few difficulties or uncertainties arose at the polls. Sinn Fein came off with the largest number of victories. Yet its triumph was not so great as had been expected, and the new form of election brought to light in an interesting and useful way the intermixture of political faiths in all portions of the island. Minorities obtained representation, including Unionists in the south, Sinn Feiners in Ulster, and also Nationalist, Labor and Municipal Reform candidates.<sup>1</sup>

<sup>1</sup> See *The Spectator*, January 24 and February 7, 1920.

## NEWS AND NOTES

### PERSONAL AND MISCELLANEOUS

EDITED BY FREDERIC A. OGG

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By vote of the executive council, the next annual meeting of the American Political Science Association will be held at Washington during the last week of December. The president of the association has appointed a committee on program as follows: A. N. Holcombe, of Harvard University, chairman; S. K. Hornbeck, of the United States Tariff Commission; and J. S. Young, of the University of Minnesota.

A standing committee on instruction in political science was authorized by the executive council in December, 1916. Wartime conditions caused the project to be held in abeyance; but, acting under authority conferred by the executive council in November, 1919, the president of the association has now appointed the committee, as follows: for the term 1920-21, C. A. Beard, of the New York Bureau of Municipal Research, and Isidor Loeb, of the University of Missouri; for the term 1920-22, W. B. Munro, of Harvard University, chairman, and J. L. Barnard, of the Philadelphia School of Pedagogy; for the term 1920-23, Edgar Dawson, of Hunter College, and S. P. Orth, of Cornell University.

A joint executive committee is being organized by the Sulgrave Institution and associated societies for the purpose of arranging a program for the celebration during the coming year of the three hundredth anniversary of the beginnings of free institutions in America. President Reinsch has named John G. Agar, of New York City, and George B. McClellan, of Hoboken, to represent the American Political Science Association on this committee.

Acting under authority conferred by the American Political Science Association at Cleveland last December, the executive council has voted to ratify, in the name of the association, the constitution of the American Council of Learned Societies devoted to Humanistic Studies. The president of the association has named Professor Henry Jones Ford and Professor J. P. Chamberlain as the society's first representa-

tives in the American Council. An account of the council's first meeting and of the organization's purposes and plans will appear in the August issue of this REVIEW.

Professor W. W. Willoughby, of the Johns Hopkins University, will soon publish through the Johns Hopkins Press a volume entitled *Foreign Rights and Interests in China*. Professor Willoughby expects to sail early in June for the Far East, and will spend most of the summer in the Philippines and Dutch East Indies. He will return to the United States in the fall to resume his academic work at the Johns Hopkins University.

Dr. Paul S. Reinsch, former American minister to China, and president of the American Political Science Association, delivered a course of lectures on the Schouler Foundation at the Johns Hopkins University in April on the development of nationalism and representative government in China.

Professor Willard Barbour, of the Yale Law School, one of the few men in the English-speaking world whose work gave evidence of mature and creative scholarship in the field of legal history, died in New Haven, Connecticut, on March 2, 1920. His best known publication is *The History of Contract in Early English Equity*. He had, in February, begun his lectures on legal history at Columbia University on the Carpentier Foundation. In his death, legal scholarship has suffered a heavy loss.

Dorsey W. Hyde, Jr., has resigned as librarian of the New York Municipal Reference Library to accept a position as chief of a motor truck research bureau at Detroit, Mich., for the collection and classification of data pertaining to transportation problems and their solution. Mr. Hyde will be succeeded at the Municipal Reference Library by Miss Rebecca B. Rankin who has served as assistant librarian during the past year. Miss Rankin is a graduate of the University of Michigan and of Simmons College, and has served as librarian of the Washington State Normal School and as assistant to the director of the New York Public Library.

Professor James Q. Dealey, of Brown University, has recently published a series of twenty articles in the *Providence Journal* making con-

structive suggestions for improvement in state government. He is also lecturing on American political policy at the Naval War College at Newport, R. I.

Professor Harold S. Bucklin, of Brown University, is chairman of a committee on Americanization recently appointed by the governor of Rhode Island.

Mr. L. D. White, of Dartmouth College, has been appointed assistant professor of political science at the University of Chicago.

Dr. Graham H. Stuart has been appointed instructor in political science at the University of Wisconsin. Dr. Stuart studied at the École Libre in Paris and recently completed his work for the doctor's degree at Wisconsin.

Mr. Allen F. Saunders, assistant in political science at the University of Wisconsin in 1919-20, has been appointed to an instructorship at the University of Pennsylvania.

Dr. A. N. Holcombe has been advanced to a full professorship of government at Harvard University.

Professor C. D. Allin, of the University of Minnesota, is spending the spring and summer months in England. During this period a portion of his work at Minnesota is in charge of Professor Harold S. Quigley, of Hamline University. Dr. Quigley has been appointed to an assistant professorship at Minnesota, from next September.

Dr. H. W. Dodds, of Western Reserve University, and formerly of the University of Pennsylvania, has been appointed secretary of the National Municipal League. The other officers of the league are: president, Charles E. Hughes; treasurer, Frank A. Vanderlip; assistant secretary, Russell Ramsay. Mr. Clinton R. Woodruff, who recently resigned the secretaryship after a long period of service, has been made honorary secretary.

Dr. E. C. Maxey has been appointed acting head of the department of political science at Western Reserve University.

Mr. Stephen J. Patten, secretary of the Yonkers Bureau of Municipal Research, died suddenly on February 20. Mr. Patten was an alumnus of Brown University and was for one year a graduate student at the University of Wisconsin. At the time of his death he had completed the residence requirements for the doctorate in political science at Columbia University and had almost finished a valuable dissertation on nonpartisan elections in American municipalities. It is hoped that the thesis may be posthumously published.

Miss Edith Rockwood, formerly of the Minneapolis Bureau of Municipal Research, is now civic director of the Woman's City Club of Chicago.

Col. James Riley Weaver, emeritus professor of political science at DePauw University, died at his home in Greencastle, Indiana, on January 28.

Dr. Stanley K. Hornbeck, formerly of the University of Wisconsin, is working with the United States Tariff Commission at Washington.

Mr. Harry W. Marsh was recently elected to the secretaryship of the National Civil Service Reform League, succeeding George T. Meyes, who has entered private business. Mr. Sedley H. Phinney succeeds Mr. Marsh in the assistant secretaryship. He was formerly with the Philadelphia Bureau of Municipal Research, the New York State Reconstruction Commission, and the New York Bureau of Municipal Research.

The thirty-ninth annual meeting of the National Civil Service Reform League was held February 26 at Springfield, Mass. Among the topics discussed were employees' councils in the federal service, centralization in the United States Civil Service Commission of employment authority over the federal service, the reorganization of the diplomatic and consular service of the United States, and opposition to the demand for veteran preference in the civil service.

A special committee appointed last June by the Canadian senate has submitted its *Report on the Machinery of Government* (Ottawa, 1919, pp. 39). The report urges the establishment of some agency which can "collect, collate, and keep available for inquirers informa-

tion now dispersed and only to be found by prolonged search." That portion of the report of the British machinery of government committee which places "research and information" among the ten main functions of government recommended for adoption in the United Kingdom is printed as an appendix.

It is reported from Columbus that the Ohio legislative committee on reorganization of the state government will recommend, among other things, the consolidation of the forty-nine boards, bureaus, commissions and departments of state government into seventeen, and the extension of the term of the governor from two years to four.

Mrs. Thomas J. Preston, Jr., formerly Mrs. Grover Cleveland, has entrusted to Professor Robert M. McElroy, of Princeton University, the preparation of an authorized life and letters of President Cleveland. All of Mr. Cleveland's papers, personal as well as public, including the collection in the Library of Congress, the letters to Commodore Benedict, Mrs. Preston's own collection, and a large assortment of letters from personal friends and political associates, have been placed in Professor McElroy's hands. He wishes it announced, however, that he will especially welcome copies of letters that can be supplied by persons who had correspondence with Mr. Cleveland. It appears that the former president wrote most of his letters in long-hand and kept no copies. The biography will be published by Harper and Brothers, and portions of it will first appear serially in *Harper's Magazine*.

Among subjects which the New York Bureau of Municipal Research has under investigation are: purchasing methods and systems of states; local government consolidation of metropolitan areas; New York City charter revision; school budgets in American cities; tax limits of cities; public health administration; history of the Massachusetts budget; budget making and financial administration of states; accounting, reporting, and auditing; and financing of governmental needs and projects.

The Ohio Institute for Government Efficiency has published a pamphlet outlining a budget system for the state.

A Southwestern Political Science Association has been established, with headquarters at the University of Texas, with a view to "cultivating and promoting political science, and its application to the solution of governmental and social problems, with particular reference to the Southwestern states." Temporary officers chosen at a preliminary meeting are Professor H. G. James, president, and Professor C. P. Patterson, secretary-treasurer. Provision is made for an editor of publications, and it is planned to issue by early summer the first number of a *Southwestern Political Science Quarterly*. A general meeting, with Professor Albert Bushnell Hart, of Harvard University, as principal speaker, was held at the University of Texas in April. By the terms of the constitution, all annual meetings are to be held at Austin. Public response to the announcement of the project has been gratifying. Annual dues for active members are one dollar a year; for sustaining members, five dollars; for contributing members, ten dollars; for life members, one hundred dollars.



## BOOK REVIEWS

EDITED BY W. B. MUNRO

*Harvard University*

*History of Labour in the United States.* BY JOHN R. COMMONS, DAVID J. SAPOSS, HELEN L. SUMNER, EDWARD B. MITTELMAN, HENRY E. HOAGLAND, JOHN B. ANDREWS, SELIG PERLMAN. (New York: The Macmillan Company. Two volumes. Pp. 623, 587.)

The labor problem in the United States is one upon which it has been much easier to feel strongly than to think clearly. It is a problem upon which the partisan and the propagandist has had much to say, the scholar relatively little. The citizen or the student who has desired to approach it scientifically and dispassionately has found it no easy task to secure the facts upon which to base an intelligent judgment. Detailed studies upon special topics have not been lacking and will, it is to be hoped, continue to appear, but comprehensive and accurate data regarding the labor movement as a whole has been conspicuously absent. By supplying this great need Professor Commons and his associates have placed under a heavy obligation to themselves not only every thoughtful student of the social sciences but every other thoughtful person who wishes to have facts to serve as a background upon which to form opinions on the critical issues arising out of the present day relations of labor to capital.

The opening sentence of the first chapter accurately explains the purpose and scope of the work. It is there stated that these volumes "deal mainly with the history of labour conditions, of labour philosophies and of labour movements—not primarily with the structure or policies of labour unions, nor with the history of individual unions, nor with the legislative results of movements, nor with current problems. Their field is rather the background which explains structure, policies, results and problems." In accordance with this plan the authors have not dealt with such topics as child labor, the protection of women in industry, factory laws, the constitutionality of labor

legislation, nor any of the other questions relating to the formulation of governmental policies in respect to labor; they have dealt with the emergence of labor as a class conscious group in this country and with the efforts of that group to make itself coherent and effective for the purpose of promoting its own class interests.

These volumes are the product of coöperative scholarship. Six scholars, working together, have covered the entire field of the study, each assuming primary responsibility for a particular part thereof, but each working in coöperation with his associates as well as under the supervising direction of Professor Commons who writes the introductory chapter. This method made possible a comprehensive, unified, and painstaking study in a field of research so broad in scope as to have been in all probability beyond the capacity of a single scholar.

Professor Commons' introduction of seventeen pages gives the reader in broad lines a penetrating survey of the conditions which have influenced the labor movement, the fluctuating philosophies which have dominated it, and the features which have characterized it in the chief stages of its development. It affords the perspective and background from which to approach the closely detailed historical studies which follow.

The first section of the book, written by Mr. Saposs, is entitled "Colonial and Federal Beginnings." It occupies 140 pages and carries the history of labor to the year 1827. It is only in the latter part of this period, however, that labor begins to emerge as a distinct group in industrial society and to exhibit a semblance of class consciousness. With the development of the merchant capitalist competing vigorously in markets which had become national came heavy pressure upon the wage earner, in the form of wage reductions and the introduction of sweatshop methods of production. Here was the origin of the modern struggle between labor and capital and here also was the beginning of the efforts of the American workingman to organize for the protection of his economic interests. These early trade unions sought to maintain the standard of life of the wage earner by securing for him a minimum wage, reasonable hours, and adequate apprenticeship rules. Their methods were the strike, aided by the payment of strike benefits, coupled with insistence upon the principle of the closed shop. It was in this early period also that there occurs the first demonstration of the blighting effects of economic depression upon the life and efforts of labor organizations.

Miss Sumner deals with the period from 1827-33 under the caption, "Citizenship." This contains 163 pages, devoted to the history of the first plunge of the American workingman into politics. If the development of class consciousness during the late twenties made the wage earner aware of the legal and economic disadvantages under which he labored, the newly acquired franchise placed in his hands a means of reform. Workingmen's parties sprang up in most of the more populous centers, and those in Philadelphia and New York seemed for the moment to threaten the integrity of the older political parties. The demands of the wage earner were much the same everywhere. He demanded a ten hour day, so that he might have adequate leisure to enable him to assume intelligently the responsibilities of citizenship. He demanded free and adequate schools for his children, so that they might not fall prey to the political demagogue. He demanded mechanics' lien legislation, the reform of the compulsory militia service system, the abolition of imprisonment for debt, the simplification and publication of the laws, and the abatement of the evils of wild-cat banking. Some of these demands he succeeded in securing while the agitation for certain others did not bear fruit till later. The workmen's parties themselves, however, did not survive, and the student of politics will examine with interest the causes of their failure. The change from industrial depression to prosperity turned the eyes of the wage earner once more to the allurements of collective bargaining. The parties were rent by dissensions, due partly to the conflicting aims and ideals of their own members and partly to the malicious encouragement of the professional politician from the outside. They suffered from their inexperience and lack of discretion in the selection of candidates, and finally they found the strength of their appeal to the voter diminished by the fact that the older parties proceeded to appropriate and support some of the more important and popular planks in their platforms.

The third epoch in the history of the labor movement extends from 1833-39 and is covered by Mr. Mittelman. This section is called "Trade Unionism" and comprises 135 pages. This period marks the transition from the old trade societies which had stressed mainly various benefit features to trade unions organized and equipped to engage actively in collective bargaining. They began as local or shop unions, but soon expanded into city central unions. They kept rigidly out of politics and confined their demands in the main to wages and hours. They undertook to prevent hasty and ill-advised strikes,

but supported financially the strikes which were sanctioned. The trade union movement during this period culminated in the formation of national trades unions the functions of which never passed beyond the stage of propaganda and advice. At least five national unions sprang up in individual trades, but this encouraging progress came abruptly and disastrously to an end with the economic and financial catastrophe of 1837.

Mr. Hoagland treats the period from 1840-60 under the title "Humanitarianism," and devotes 136 pages to the task. The panic of 1837 and the years of depression which followed destroyed the labor organizations and rendered hopeless any attempts in the direction of collective bargaining. It was easy, therefore, to lure the wage earner into schemes of speculative reform and to arouse his interest in various panaceas. The early part of this period is accordingly marked by experiments in association and coöperation. Plans of land reform were projected by agrarian reformers, and the movement for a shorter work day was pushed as a means of "making work." These humanitarian projects never succeeded in enlisting the whole-hearted support of labor, and the ventures in coöperation failed because of lack of capital and business ability as well as hostile competition from the outside. In the early fifties the skilled trades began to organize and to make attempts at collective bargaining. But the unions thus formed shortly suffered disintegration as a result of the severe economic depression. This disintegration, however, was not so complete as formerly and the nucleus for future resuscitation and development remained.

The period of "Nationalization" extended from 1860-77. Mr. Andrews is the author of this section, which is 188 pages in length. With the return of business prosperity during the Civil War trade unions began to revive. The nationalization of markets through effective means of transportation made necessary national trade unions, which brought in their wake the national organizations of employers, violent and disastrous strikes and a strengthening of the laws against conspiracy and intimidation. The trade unionism of the period was, however, weak. It aimed merely at the loose federation of autonomous unions; it lacked a national benefit system; the low dues required from members prevented the accumulation of strike funds; and finally the leaders who were capable of guiding it wisely were unable to resist the temptation to go into politics. During this period also occurs the first national labor party in the form of the National Labor Union. Working for two primary ends, the eight hour day and greenbackism,

it followed the policy of pledging the candidates of the older parties to these principles rather than putting its own candidates in the field. With the abatement of public interest in the greenback issue trade union action came once more to supplant political action in the minds of labor leaders and the National Labor Union disintegrated.

By far the longest section of the book is that covering the period since 1876, to which Mr. Perlman has given the title "Upheaval and Reorganization." To this study 342 pages are devoted. Here is to be found an accurate analysis of the beginnings of American socialism and the influence of that movement upon the principles and progress of American labor. Here also is traced the development of the rivalry which at last became so bitter between the Knights of Labor, seeking both through strikes and through political activity to further the interests of the unorganized and unskilled worker, and the American Federation of Labor, a cohesive organization of the skilled trades, relying almost exclusively upon collective bargaining and concerning itself with politics only when necessary to protect itself from legislative infringement of its freedom of economic action.

The success of the American Federation and the disintegration of the Knights afford the key to the present alignment of groups in the laboring class. The unskilled workman remains largely unorganized and is inclined to turn a sympathetic ear to the arguments and programs of the socialist, the syndicalist, the anarchist and the Industrial Workers of the World. The federated trade unions comprising in the main the skilled workers have achieved a distinct consciousness of their own interests and power; they are unwilling to weaken an organization which has so far weathered the storms of economic strife by admitting the unskilled worker, and they are also unwilling to deviate from the use of collective bargaining which has proved their most effective weapon. They refuse to ally themselves with any political party or to exert vigorous efforts to secure labor legislation. While not assuming the rôle of prophet Mr. Perlman makes this very pertinent observation: "So long as the majority of the American trade unions refuse to make labor legislation a corner stone in their program, so long as their chief concern with politics remains merely to protect their economic freedom of action, just so long will they lack an adequate incentive for forming an independent labor party." Although general tendencies since 1896 are noted in a concluding chapter of sixteen pages, the detailed treatment of the labor movement ends with that year.

So successful have the authors been in the execution of their coöperative endeavor that the reader is hardly conscious of a change in point of view or method of treatment in passing from one section to another. Elaborate documentation citing original source material gives evidence of a most scrupulous regard for historical accuracy, a virtue which is still further attested by the entire absence of anything savoring of a propagandist viewpoint, or a desire on the part of the authors to defend any particular thesis.

It can hardly be said that the book makes easy reading. The style throughout is compact to the point of dullness, which is, no doubt, the price which the authors pay for writing two volumes instead of four. The reader will find himself frequently floundering somewhat helplessly in a sea of detail, out of which he is able to emerge only with difficulty by the aid of the elaborate analytical table of contents which proves to be more descriptive than analytical. The average reader would doubtless be grateful for a summarizing paragraph at the end of each chapter with perhaps a slightly longer summary to conclude each section. The volumes are provided with a satisfactory index and an exceedingly valuable classified bibliography of nearly fifty pages.

ROBERT E. CUSHMAN.

*University of Minnesota.*

*Origin of Government.* By HUGH TAYLOR. (Oxford: Blackwell. 1919. Pp. viii, 259.)

*Die Moderne Staats-Idee.* (Deutsche, zweite vermehrte Ausgabe.) By DR. H. KRABBE. (The Hague: Martinus Nijhoff. 1919. Pp. xi, 311.)

Dr. Taylor's little book embodies a bold attempt to formulate a new and self-sustaining theory, not only of the origin, but also of the evolution of government. In a field of supreme human interest in which from Plato's day to our own research and speculation have ever continuously been engaged in constructive effort, the author brusquely sweeps away all previous explanations as worthless and rears his edifice *ab initio* on the foundations of the Darwinian law of natural selection. "All theory with regard to the origin of government, of society, or of civilization must, as a matter of fact, start completely afresh with Darwin and the struggle for existence."

Assuming a primordial condition of *bellum omnium contra omnes*, in which the struggle for survival among individuals follows the laws

which govern other animal organisms, he builds the incipient social group about the person of some strong and dominating individual. This struggle for, and achievement of, supremacy is a purely biological phenomenon. It is here that government originates. Once established and the social group created, the government itself becomes a new and determining factor in the process of evolution. The struggle for survival is now broadened to a contest between social groups, in which, however, the same forces operate. That group tends to survive which is most thoroughly consolidated and subordinated to the will of its ruler. This implies a cessation of the fierce conflict between the individual members of the group, and permits the development of morality and the social virtues, which were repressed under the régime of individual competition. Only under the strong rule of absolute monarchy can the state develop and the foundations of civilization be laid.

After a certain degree of social stability has been attained it frequently happens that the state's continued existence, in the conflict between social groups, is menaced by a weak and incompetent ruler. Nature supplies a corrective to this danger in the usurpation of power by strong and capable men. It is this principle which the author describes as "reorigination of government." Improvements in government, and its recognition of the necessity of furthering the general welfare are the consequence of an increasing demand for liberty, which springs from an "atavistic longing for the delights of the untrammelled individual existence." The establishment of a stable political control, the recognition of the fixity of government, is an eventual stage in evolution, accomplished largely through the agency of religion which attributes a sacrosanct character to the person of the king. With the monarch thus elevated to a position above the reach of ambitious would-be usurpers, the struggle for supremacy takes the form of competition for ministerial office. The king becomes a gilded figure-head and real power is the prize of the intellectually strongest statesmen.

There is always a fascination in a simple and logical explanation of political origins and evolution. It was these qualities which, for example, gave Rousseau's *Contrat Social* its great vogue. Such general explanations have, however, hitherto always shipwrecked on the extreme complexity and diversity of the facts of history and anthropology. While highly suggestive, it is doubtful if the work under review will in any respect constitute a new point of departure for students of political theory. The fundamental premises of a pre-

social state of universal warfare, that government originates in a struggle for supremacy, and that it takes the initial form of absolute monarchy in every instance are themselves most highly questionable. The implication that there is and can be no law between states save that of nature "red in tooth and claw" is scarcely likely to gain general credence in an age which is witnessing so many manifestations of the spirit of internationalism.

The sovereignty of the state is being attacked from many quarters, and through various instrumentalities. From within it is being undermined by such movements as guild socialism; from without it is being openly menaced by the waxing strength of internationalism. Keeping pace with, if not in some instances anticipating the expression of these political and social tendencies, and lending substantial support to them, is the increasing volume of theoretical literature which is devoted to a criticism of the current doctrines of state sovereignty and to a constructive attempt at a more adequate interpretation of political phenomena.

From this point of view, the work cited above by Dr. Krabbe, who is professor of public law in the University of Leyden, is a very significant *livre de circonstance*. The central thesis is the untenability of the doctrine of the sovereignty of the state and the necessity for the substitution therefor of the principle of the sovereignty of law. The notion of state sovereignty is a heritage of the régime of absolute monarchy and, in the view of the author, is utterly incompatible with the real character of the modern state, which, so far from embodying a supreme power which is the source of all law, is recognized as being subject to the law on every hand. Indeed, it is a common legal consciousness within a social group which constitutes a state, and without which there can be no state.

Moreover the sole essential function of the state is to formulate the norms of law which spring from this legal consciousness. The concept of the state as a unity of public interests, the care of which is one of its essential functions to be performed through military, police and administrative agencies, is again the product of the absolutistic régime. The idea of public interests itself is a fiction. Within the state there is a great complexity of interests, which are in no real sense divisible into public and private categories. It is the business of the state to evaluate these interests and to determine norms of law and rights on the basis of the general legal consciousness, but not to pro-



mote or foster interests. Administrative agencies established on the basis of law for the furtherance of interests are not, therefore, organs of the state. This view also implies a denial of the distinction between public and private law.

The concluding chapter is devoted to a discussion of the international legal community. Like all other law, international law is the product of the legal consciousness of a community which in this case transcends the state. It does not derive its binding validity from the several states, nor are these the subjects of international law. Like the law of the state it embodies norms for the regulation of various interests which are not, however, state interests. The international community lacks the character of a state merely because there have not developed for it independent organs for the evaluation of interests and the determination of rights based thereon. But the course of evolution is in this direction. The author believes, however, that just as in the evolution of the national state an essential stage was that of absolute monarchy in which there was developed an "apparatus of power" including army, police and public administration, so the realization of the world state will be accomplished only in connection with the establishment of a supreme authority endowed with compulsory means of enforcing its will. But just as the legal state has succeeded to the absolutistic state within the national area, so eventually will evolve a legal world state which will exemplify the sovereign rule of law coincident with humanity.

WALTER JAMES SHEPARD.

*University of Missouri.*

*The Society of Free States.* By DWIGHT W. MORROW. (New York: Harper and Brothers. 1919. Pp. 224.)

*The Psychology of Nationality and Internationalism.* By W. B. PILLSBURY. (New York: D. Appleton and Company. Pp. 314.)

*The Psychology of Nations.* By G. E. PARTRIDGE. (New York: The Macmillan Company. 1919. Pp. 333.)

*The New Social Order.* By HARRY F. WARD. (New York: The Macmillan Company. 1919. Pp. 384.)

It was to be expected that so fundamental a change in the organization of the world of states as that foreshadowed by the League of Nations should produce its reactions in the fields of sociology, psychol-

ogy and ethics, as well as in the fields of political and economic science which it more directly concerned. The problem at issue is the reconciliation of national independence with international law and order. Obviously some measure of the sovereignty which has been the traditional attribute of states must yield to the demand for common institutions which shall adjust the conflicting claims to which separate units of government inevitably give rise. Mr. Morrow's volume is concerned with the political aspect of this reconciliation. After sketching earlier projects for world peace he reviews the international agencies that have been forced upon the world by the demands of commerce, together with the more recent agencies that were created by the Allies during the war against Germany. The principle of nationality is next discussed as a concrete problem, and the question is raised, though not answered, what compromises must be made to adjust the desire for national self-government to the desire of men for world order. The concluding chapter contains a brief but incisive commentary upon the draft covenant of the league, and is followed by the text of the covenant as finally adopted.

The volumes by Pillsbury and Partridge are concerned with the problem of nationality in its psychological aspects. Professor Pillsbury analyzes the physical and mental factors of nationality and its historical development, studies the national mind and "how it thinks, feels, and acts," shows what the nation means as an ideal and what is its relation to the state, and in his concluding chapter argues that nationality is not the last word in political organization, but that a supernationality as expressed in a league of nations is a feasible as well as a necessary step forward. The argument is well-reasoned throughout.

Mr. Partridge pursues the problem of nationality back to its biological foundations, and gives us a suggestive study of the motives of war in the light of the general principles of the development of society. He shows that war is the product "of the whole character of nations." The "motive of power" is the principle of war and manifests itself in the "intoxication impulse" and in the idea of national honor and in the political motives of war. The second part of the volume deals with the educational problem, and shows the necessity of educating the national consciousness with reference to the creation of a world consciousness. Neither of the two volumes regard the practical issues involved in international organization as within their scope.

The problem of a league of nations forms but a single chapter in Professor Ward's ethical study of "impending social change" brought about by the conjunction of "economic pressure and idealistic impulse" caused by the recent war. Part I discusses the principles of the new order, equality, universal service, efficiency, the supremacy of personality, and solidarity; while Part II takes up the practical programs for the new order, including the British Labor party, and the Russian Soviet Republic. The chapter on the League of Nations comments on the chief articles of the covenant, and the conclusion is reached that if the league is to serve its true purpose it must develop its present bureaucratic machinery into a "Parliament of the Peoples."

The literature of the League of Nations in all its phases is growing monthly in volume, but there is still need of a more thorough and scientific analysis of the underlying principles of the league and of the facts of international life upon which its success is conditioned. In spite of the unending debates in the senate, perhaps because of them, the authoritative word must be spoken by a scholar who not only knows the history of international law in the past, but who can weigh and appraise the political, economic, social, psychological, and moral forces which will determine the practicability of an effective international organization.

C. G. FENWICK.

*Bryn Mawr College.*

*The Economic Consequences of the Peace.* By JOHN MAYNARD KEYNES. (New York: Harcourt, Brace and Howe. Pp. 298.)

This is a brilliant, penetrating, stimulating, book; but it is also unbalanced, inconclusive, and unconvincing. The author's qualifications commend him highly. He is one of the most eminent of the younger British economists, and his connection with the treasury during the war, as well as his service as the treasury's representative at the Peace Conference and as deputy for the chancellor of the exchequer on the supreme economic council, brought him into first-hand contact with the problems that he discusses. He is not only liberal-minded but uncommonly free from national prejudice. Furthermore, he writes exceedingly well. His pen-picture of the Council of Four at work, whether or not entirely accurate, is unforgettable.

The book is a sweeping indictment of the treaty. The points that it seeks chiefly to establish are: (1) the Peace Conference was domi-

nated by the clash of two main programs, namely, a "Carthaginian peace," carried out on the principle of *vae victis*, and a magnanimous peace, based on the ideology of the fourteen points; (2) owing largely to President Wilson's temperament and lack of exact information, the Carthaginian policy triumphed, and the treaty became a dishonest evasion of the basis on which Germany had been given to understand that she had surrendered; (3) the treaty was, in the main, dictated by France, and has as its primary object "to set the clock back and to undo what, since 1870, the progress of Germany had accomplished;" (4) the treaty utterly ignores economic realities, for example, the interdependence of European peoples, the impoverishment of Germany, and the inability of the former empire even to begin to redress the wrong it has done unless its economic recovery is permitted; (5) the treaty in its present form cannot be enforced and would prove ruinous to all Europe if it were enforced; and (6) the instrument, therefore, must be immediately revised. Germany's payments to the Allies, we are told, must be fixed at not more than seven and one-half billion dollars, exclusive of the property already turned over. The reparations commission must be abolished or put under powerful restraint. The coal clauses must be abrogated. After ten years of reciprocal shipments of coal and iron ore by France and Germany, the Saar Valley must be returned to the latter. Austria must not be subject to reparations. Finally, although this is outside the domain of the treaty, all indebtedness between the governments of the allied and associated countries should forthwith be canceled, and a huge international loan should be floated to furnish the means of rebuilding Europe.

In this remarkable criticism there is much that is plausible and a good deal that is unquestionably true. The treaty is not perfect, and nobody supposes that it is final. But Mr. Keynes's appraisal furnishes no sure guide to the instrument's merits and faults. He resigned his official duties and withdrew from the scene when he found that things were not going his way, and he wrote when hardly in a frame of mind to judge dispassionately the events in which he had participated. As a result, his book gives more evidence of moral indignation than of intellectual discrimination, and his language is often lacking in scholarly restraint. In the second place, the author's vision, while uncommonly penetrating in the directions in which he looks, fails to sweep the entire horizon. Mr. Keynes is interested in economic subjects and impatient with political matters, and his treat-

ment of his theme suffers throughout from a lack of political perspective. He attaches a greater degree of finality to the treaty than the facts warrant. He constantly expects the worst to happen, naïvely assuming, for example, that the reparations commission will persistently demand the impossible of Germany, even though the larger and ultimate interests of the people in whose behalf reparation is asked dictate a milder course. He extols the fourteen points, yet is bound to admit that on some subjects they were ambiguous, and that they gave no answer at all to many insistent questions.

In an honest and courageous effort to be fair, Mr. Keynes leans decidedly backwards, and his entire body of ideas becomes essentially—to use a term employed by a recent critic—Germanocentric. He is wrong in saying that Germany was the “central support” of the European economic system before the war; he is no less in error in testing every phase of the new peace by the effect which he expects it to have on Germany’s place in the new world order.

FREDERIC A. OGG.

*University of Wisconsin.*

*The Powers and Aims of Western Democracy.* By WILLIAM MILLIGAN SLOANE. (New York: Charles Scribner’s Sons. 1919. Pp. xiii, 489.)

It was undoubtedly the intention of Professor Sloane to provide in this volume a body of teaching to counteract dangerous current tendencies in the direction of “red radicalism.” There is no effort made to contribute to the material side of political knowledge; the thirty chapters embody solely the writer’s vehement beliefs on democracy and general politics.

After a vitriolic introduction, dealing with “The Passing Age in Politics,” an attempt is made to trace the development of the democratic idea from the earliest times to the present, with reference to the inherent principles and external forms of democracy, as well as to assess some of the advantages and disadvantages of that political creed. There follows a study of the evolution of the modern “nation” in theory and history, in contrast to the oriental and the medieval state, with some analysis of the internal organization of the modern national state. Finally there is presented a description of the relations between democracy and nationality and “the struggle for peace” as they appear to the author.

The conclusions are difficult to find. The book does not so much build up conclusions as elaborate passionate beliefs. The treatment is incorrigibly discursive and verbose. The tone is one of vigorous assertion rather than one of cautious investigation. No one of the many pieces of fact and fancy employed in spinning out the gospel is substantiated by any reference to external evidence. It is doubtful whether the cause of law and order, of truth and reason, is aided by such efforts, however sincere the author's intention.

When the writer indulges so constantly in abusive language and violent epithet the doubt felt as to the value of such work deepens. Finally, when the text makes clear that the writer simply neither knows that which he pretends to discuss (as in the astounding definitions of Socialism, majority and minority Socialists, Bolsheviki and Mensheviki) nor accurately gauges the most elementary currents of public opinion in America (as in the assertion that America desired a plebiscite in Alsace-Lorraine), one is thoroughly discouraged at the idea of any positive results from the labors of the author.

PITMAN B. POTTER.

*University of Illinois.*

*Federal Power: Its Growth and Necessity.* By HENRY LITCHFIELD WEST. (New York: George H. Doran Company. 1918. Pp. xi, 216.)

One of the outstanding facts of political development in the United States has been the greatly increased authority of the federal government. Mr. West has done a useful thing in describing the growth of federal power and showing that it has had its roots in the past. "Its continued manifestation upon a constantly enlarging scale is as inevitable as fate," and the author makes suggestions as to advisable reforms in the federal system: some sort of cabinet responsibility to Congress and a diminution of the authority of the President, particularly with regard to vetoes and appointments. The reader may approve the one and disapprove the other.

The opinion may be ventured, however, that Mr. West has left undiscussed the two most important questions with regard to the federal power. In the first place, how is the authority of the national government to be extended constitutionally? Is it to be by amendment, or by indirect action under the commerce, postal, and taxing clauses, and if by the latter method is this proper? Is the control to be exerted coercively or paternally and in what fields?

Secondly, it is now a commonplace that either through cumbersome rules, sheer incapacity, or multiplicity of duties, Congress does not perform its proper functions. Is there to be devolution and if so, of what sort? Will it be geographical or according to interests, as in the case of the national industrial councils in England?

But there is no reason to quarrel with Mr. West because he has not written a different sort of book. These questions have been asked, because the two problems are involved in the question of federal power and offer an almost virgin field for inquiry. The present volume describes the past in general terms and in a readable and for the most part accurate manner.

LINDSAY ROGERS.

*University of Virginia.*

*George von Lengerke Meyer. His Life and Public Services.* By M. A. DEWOLFE HOWE. (New York: Dodd, Mead and Company. Pp. 519.)

In the preparation of this work, Mr. Howe has followed the golden rule for biographers, by allowing his subject, so far as possible, to tell his own story. Letters and diary entries in large measure make up the five hundred pages of this substantial volume. They constitute the record of an interesting, useful and busy life. It might be said of George Meyer, as Lowell did of Josiah Quincy:

"This was in all ways a beautiful and fortunate life—fortunate in the goods of this world—fortunate, above all, in the force of character which makes fortune secondary and subservient."

Meyer was "well born," as the phrase goes. His father was a successful merchant, of German descent. His mother was of pure New England stock. He was graduated at Harvard University in 1879. The life of a man of ease and fashion was open to him. He loved sport. It is said that he "first came into prominence on horseback." But from early life his habits were industrious, and he was inspired with the ideal of public service. During the first ten years after leaving college, he devoted himself to business, and, as Mr. Howe says, "he laid the foundations of a well deserved reputation for sagacity and acumen in business matters."

He entered public life in 1889, when he was elected a member of the Boston common council. In 1892, he became a member of the state legislature, and in 1895, he was chosen to be speaker of the house,

a position which he held for three years. His party interest and activities made him a delegate to the Republican national convention in 1900, and led to his appointment by President McKinley as ambassador to Italy in December of that year, at the age of forty-two. Four years in Rome, two years as ambassador to Russia, two years as post-master-general in President Roosevelt's cabinet, and four years as secretary of the navy under President Taft; this is the outline of Meyer's services in the national government. His diary and his letters contain the record of these abundant years.

"It was rather as a 'listening post' in the European world than as a station for difficult work in diplomacy," says Mr. Howe, "that Rome gave Meyer his opportunities for valuable service during the four years of his ambassadorship; and in establishing many relations of intimacy and friendship, he was constantly turning the pleasant life he led to valuable purposes of his own government."

He formed warm friendships with representative men and women of all classes in Italy, and won the confidence of the government to which he was accredited, as well as of his colleagues in the diplomatic corps. During this period, he attended the yacht races at Kiel, where he met and formed an acquaintance with the Emperor of Germany, which later proved of value to him and to his country.

In January, 1905, President Roosevelt wrote to Meyer expressing his intention of appointing him ambassador to Russia. "St. Petersburg," he said, "is at the moment, and bids fair to continue to be for at least a year, the most important post in the diplomatic service, from the standpoint of work to be done, and you come in the category of public servants who desire to do public work, as distinguished from those whose desire is merely to occupy public place—a class for whom I have no particular respect."

The prologue to the great Russian tragedy was enacted a few days before Meyer left Rome for his new post, when the Tsar refused to receive from Father Gapon a petition on behalf of the workingmen of Russia, and the troops fired upon the crowd, killing and wounding a number of people. January 22, 1905, Meyer, noting this fact in his diary, prophetically adds: "Probably the commencement of a revolution, and possible fate of the Tsar as ruler of Russia."

He elaborated his thought in a letter to the President: "The historical relations between the people and the Tsars explain how it was possible that those unarmed Russians should have entertained the hope that they would be permitted to see the Tsar in person and lay



their petition at his feet. The pathetic trust the people have put in the Tsar has failed them, and they have lost their blind faith in him, and they are now ripe for socialistic agitations."

His observations concerning this incident illustrate Meyer's ability correctly to interpret the significance of public events—a capacity which served him well during his years of foreign service. His letters and diary entries record in great detail his dealings with the Tsar, under instructions from President Roosevelt, during the Portsmouth Conference.

Meyer's accounts of the meeting of the first Duma in May, 1906, the characteristics of its members, and the attitude of the Tsar and his court towards them, clearly indicate the strength of the current which was setting against the imperial government. Yet, he records:

"The court party appears to be laboring under the delusion that the Duma misrepresents the nation. They are apparently as blind to the storm that is gathering as they were to the evidences which foretold a naval defeat to Rodjestvensky. I cannot help but take a pessimistic view as to the future, when I see evidences almost everywhere of a communistic spirit among the workmen and peasants. Added to this is the fact that the Government throughout the year has been driving even the moderate element which are now unorganized, over to the extremists. . . . The Tsar is stronger in ideals than in achievements. The education of the masses has been shamefully neglected. The Jews have been persecuted and massacred. The bureaucracy is corrupt and unpatriotic. There are no leaders on either side. The revolutionists want capital punishment abolished, but freedom to use the bomb."

This is the note of doom. The *dénouement* was postponed longer than Mr. Meyer apprehended. But the conditions which he noted inevitably led to the collapse of government and the chaos which now reigns in the Russian Empire.

From the picturesque and dramatic life of ambassador to Russia, Mr. Meyer was transferred in 1907 to the toilsome office of postmaster-general in President Roosevelt's cabinet. He addressed himself to his new work as to a business problem of first importance. The ability he displayed in dealing with the problems of the post office department led President Taft, in 1909, to appoint him secretary of the navy. The navy department had suffered from having had six secretaries during the seven years of Roosevelt's administration. After thorough investigation and careful study, Meyer brought about a complete

reorganization, resulting in increased efficiency and greatly reduced cost. He reorganized the active fleet, placing it upon a war basis and maintaining seventeen battleships at all times in cruising condition at sea. He divided the business of the department into four parts, each under the supervision of a naval aid to the secretary.

The value of this work was quickly recognized. Admiral Sims writes that "Mr. Meyer's great service to the Navy was that he placed the control of the Navy, and particularly the control of the design of all of our vessels, in the hands of line officers." That is, he put the control of the navy as a fighting machine in the hands of those who were to direct the fighting. He drew into close association with him the most competent officers in the service. Towards the close of his administration he told a friend that no other employment ever had given him so much keen pleasure and inspiration as this.

During the unhappy controversy after the renomination of Mr. Taft for the presidency in 1912, despite his love for Roosevelt, Meyer remained loyal to Taft. He strongly entertained and indorsed the opinion expressed in Senator Root's speech of announcement to the President, "Your title to the nomination is as clear and unimpeachable as the title of any candidate of any party since political conventions began."

The few years remaining to Meyer after he left public office in 1913 were full of interest. His letters describe two visits to Europe. In 1913, he was the guest of the Kaiser on his yacht at Kiel, a visit described at length in his diary. He was in Germany in August, 1914, at the outbreak of the great war. Upon his return home, he threw himself with ardor into the campaign for preparedness, and in 1916, he worked hard on behalf of Judge Hughes' candidacy for President. His life came to an end in March, 1918, shortly before his sixtieth birthday.

"Life," says Judge Holmes, "is action, the use of one's powers. As to use them to their height, is our joy and duty, so it is the one end that justifies itself." George Meyer's life justified itself. He lived abundantly. He enjoyed life. He put forward his powers with a conscious joy in the effort. Always the interests of his country inspired him to his greatest endeavors. As President Roosevelt wrote of him, "he was a singularly useful public servant." The record of his life which Mr. Howe has so well prepared will be an inspiration and an example to the youth of our country.

GEORGE W. WICKERSHAM.

*New York City.*

*Arguments and Speeches of William Maxwell Evarts.* Edited by Sherman Evarts. (New York: The Macmillan Company. 1919. Three volumes.)

The publication of these volumes makes a notable addition to American political and legal literature. The public life of Mr. Evarts covered more than fifty of the most important and exciting years in our history. A supporter of Daniel Webster in his unsuccessful struggle for the presidency, he afterwards became a founder of the Republican party and was long active in its councils. He was a member of two cabinets, of several special commissions, and finally of the United States senate. A leading member of the New York bar, he appeared as counsel in some of the most celebrated cases of the nineteenth century. It is to be regretted that the editor has given only a bare outline of his career. Something to show his relations with the other leaders of the period would have been a valuable addition.

These volumes will not be of as great value to students of history and government as to those interested in constitutional and international law. The arguments of special interest in these latter fields are those in the Prize Cases, the Savannah Privateers Case, the Springbok Case, and in Hepburn vs. Griswold. Of particular interest is the argument before the international tribunal at Geneva, where Mr. Evarts was associated with Caleb Cushing and Morrison R. Waite as counsel for the United States in the Alabama Claims controversy. Equally important and probably of greater interest historically are the great arguments made in defense of President Johnson during the impeachment trial, and on behalf of the Republican claimants before the electoral commission of 1877.

The chief effort of Mr. Evarts' private practice, in the present collection is the selection from the closing address for the defendant in Tilton vs. Beecher. It may be questioned whether this, great forensic achievement as it was, really deserves the 245 pages devoted to it. The miscellaneous addresses, political and commemorative, have been well chosen and show a high degree of literary excellence. Perhaps Mr. Evarts is seen at his best as a public speaker in the New England Society addresses, several of which have been included. The editor's introductions and comments are brief and well chosen throughout. Taken as a whole, the volumes are a worthy memorial to one of the the influential leaders of the American bar, and of the Republican party during a difficult period of our history.

WILLIAM A. ROBINSON.

*Dartmouth College.*

*Have Faith in Massachusetts.* By CALVIN COOLIDGE. Boston and New York: Houghton Mifflin Company. Pp. x, 275.)

This is a collection of forty-three occasional addresses, official messages and proclamations, all but one of which were spoken or written by Mr. Coolidge while either lieutenant governor or governor of Massachusetts, that is, during the years 1916-19. They range from college dinner speeches to papers and utterances in connection with the strike of the Boston police.

Governor Coolidge's personality is most interesting. He forges his way to the front without the assistance and in spite of the lack of those qualities of geniality and affability which are generally supposed to be a *sine qua non* for success in American political life.

This book uncovers some of the reasons. It does not disclose any new political philosophy; there are none of the rounded periods of the conscious orator; but there is a distinct gift for setting forth old truths in pithy, epigrammatic form, and a continued insistence upon the traditional New England virtues as a saving grace in troubled times. As a phrase-maker, Governor Coolidge has few present-day equals; but the book reveals also a man well read in history; with a fine appreciation of good literature; with a keen sense of the value of education, especially that which has somehow come to be termed "a classical training;" and above all, a mind of manifest sincerity. He usually thinks straight, and he always speaks plainly. If one regrets occasionally a tinge of somewhat smug satisfaction with "things as they are," *per contra* one will not find a sentence that is mean or ignoble; if there is now and then a platitude, there is also no resort to the wiles of the demagogue nor the sophistries of the political charlatan.

The elected officer whose creed is "Don't hesitate to be as revolutionary as science—Don't hesitate to be as reactionary as the multiplication table," is too rare a figure.

Governor Coolidge is revealed as a welcome twentieth century embodiment of the somewhat old-fashioned but fine New England type of public man, and moreover as one evincing steady and hopeful growth.

JAMES P. RICHARDSON.

*Dartmouth College.*

*The Return of the Democratic Party to Power in 1884.* By HARRISON COOK THOMAS, Ph.D. (New York: Columbia University Press. 1919. Pp. 261.)

One cannot read Dr. Thomas's monograph without being impressed with the astonishingly close resemblance between the party situation in the period 1880-84 and the party situation in 1916-20. A comparison of the two periods, even with due allowance for differences, will furnish slight comfort to those who rejoice to think that they discern in the present indistinctness of party lines and absence of clear-cut fundamental issues, unmistakable symptoms of the early demise of the old parties and the emergence of new parties bearing the labels, Liberal and Conservative. For some such prediction in the early eighties there was about as much foundation as there is today.

While Dr. Thomas has evidently made a painstaking first-hand study of contemporary newspapers, biographical and autobiographical material and campaign literature, his conclusions respecting the influence of the several factors in the election of 1884 are not essentially different in most respects from those reached by earlier writers, notably Sparks, Rhodes and Stanwood.

The material in this volume is well arranged and presented in a pleasing style with a commendable degree of detachment, discrimination and impartiality. The least satisfactory part of the work is the unnecessarily long introductory sketch of political events from 1860 to 1880, which constitutes almost one-fourth of the book. The portions which come the nearest to being real contributions are those dealing with the Independent movement and the part played by Benjamin F. Butler.

Dr. Thomas has performed a real service in bringing together more widely selected and carefully digested material relating to the presidential campaign and election of 1884 than is to be found in any other volume.

P. ORMAN RAY.

*Northwestern University.*

*Our War with Germany.* By JOHN SPENCER BASSETT. (New York: Alfred A. Knopf. 1919. Pp. 378.)

Professor Bassett has written modestly and intelligently in a field in which it would be easy to go far astray, and has attained more than the "reasonable accuracy" that his preface hopes for. No better book

is as yet available for the student interested in our participation in the world war, and no other is so detached and historical-minded as this. It will be a useful handbook in the numerous courses on the history and diplomacy of the war now under way.

The least successful portion of the book is that which covers the obscure yet significant leadership of the United States in the development of the "single front," military and economic. Professor Bassett appears to have overlooked a group of facts that may prove, eventually, to cover the key to Allied victory. "Inter-allied" does not appear in his index, nor does "Supreme," which ran in the titles of many coöperative control bodies; while "Allied" appears but once, and then refers to an inadequate and misleading statement (p. 296) respecting the Allied Naval Council. The fact is that in the summer of 1917 American loans started a course of events that led irresistibly to the Supreme War Council of December, the supreme command of March, 1918, and the pooling of resources upon the basis of "work or fight" in August. Enough of the evidence on this point is visible to make it a matter of regret that Professor Bassett failed to see it.

The general survey of events lacks dramatic appreciation, and is tiresome but sound in the chapters preceding the outbreak of the war. The external facts are generally unimpeachable. Here and there a slip has been noticed: the earliest Plattsburg camp was in 1915, not 1916 (p. 121); Hoover was named food commissioner May 19, 1917, not May 20 (p. 138); the order taking over the railroads was dated December 26, not 27 (p. 150); Mr. Ryan's promotion to assistant secretary of war (p. 188) was more than an elevation in rank, for he assumed control of the division of military aeronautics, in addition to that of aircraft production; Foch seems to have become commander in chief March 26, 1918, two days earlier than Mr. Bassett's date (p. 221); action on the Saloniki front began September 15, 1918, not September 16 (p. 263).

Such errors are trifles. The book is a commendable and useful enterprise.

FREDERIC L. PAXSON.

*University of Wisconsin.*

*The German Empire, 1867-1914, and the Unity Movement.* By WILLIAM HARBUTT DAWSON. (New York: The Macmillan Company. 1919. Two volumes.)

This is a good, perhaps the best, considerable work in English on the political history of Germany since the establishment of German unity. This is not extravagant praise, for good accounts in English are few. Sir A. W. Ward's recent volumes are rather crammed with minutiae and do not deal with the last years before the great war. Mr. Grant Robertson's *Bismarck* is an exceptionally brilliant biography, but naturally says but little of the German *Weltpolitik* after the Iron Chancellor surrendered the helm to his impetuous imperial successor. Mr. Dawson's own admirable earlier works on German tariffs, socialism, municipal government, and *The Evolution of Modern Germany* lead one to expect a high level of interest and excellence in the present work. The expectations are nearly but not quite fulfilled. This is probably because the author's special studies on Germany heretofore have been mainly on the side of economics and government; but in these two volumes he ventured to give some three-quarters of the space to diplomatic history, with which we suspect he is less familiar. In fact he often spreads out his narrative into a pedestrian account of general European politics so far as Germany was involved in them, instead of interpreting in detail the secret springs of German policy and weighing nicely her gains and losses. In the account of the Crimean War he is too hard on Sir Stratford de Redcliffe. He is totally unacquainted with the details of Bismarck's Reinsurance Treaties with Russia, because he had not read Goriainov's article in the *American Historical Review* (January, 1918). He does not make sufficiently clear the disastrous effects on German foreign policy exerted by Emperor William II's personal influence and by the mediocre advisers with whom he surrounded himself after Bismarck's dismissal. On the other hand, it is a pleasure to read a work which is so impartial and objective. Though it was written during the war and completed just after the armistice was signed, the author was in no way warped in his judgments by the passions which the war has stirred in so many. In fact in the chapters on the Morocco Affair he gives a much more sympathetic consideration of Germany's side of the case than is to be found in most French and English books.

As to general emphasis, one may say, on the whole, the events of the Bismarckian era are treated in more detail and are handled in a

more satisfactory way than those of the post-Bismarckian age; this is perhaps natural since our sources of information are so much fuller for the earlier period, and so many sound books have been written upon different phases of it. But precisely because there is such a dearth of sympathetic and scholarly accounts of Germany under William II we could have wished that Mr. Dawson had been able to devote a relatively greater amount of space to the period since 1890. But it is ungracious to find fault with an author for the way he chooses to treat his subject. And we repeat that the general reader will scarcely find in English a better explanation of Germany's rise to European domination through the establishment of political unity and Bismarck's genius, and of her loss of this leading position through the anxiety and drawing together of her neighbors on account of her threatening *Weltpolitik* and the follies of the Kaiser and his advisers.

The chapters on domestic affairs, tariffs, railroads, colonial expansion, and social legislation are brief but excellent and accurate; we could have wished that they had been fuller had not the author already dealt with them in considerable detail in the recent enlarged edition of his *Evolution of Modern Germany*.

SIDNEY B. FAY.

*Smith College.*

*The Secret Treaties of Austria-Hungary, 1879-1914.* Vol I: Texts of the Treaties and Agreements. Edited by Alfred Franzis Pribram and Archibald Cary Coolidge. (Cambridge: Harvard University Press. Pp. 308.)

One result of the destruction and collapse of several old governments in Europe is that the supposed need for secrecy in the affairs of state which concerned them has disappeared. The process of revelation throws considerable light on the affairs of governments which still exist and whose secrets are being maintained. Professor Pribram has begun a work of supreme value based upon material in the archives of Austria-Hungary, which promises to reveal a large part of the internal structure and workings of the European state-system as it existed during the period of "armed peace" between the Treaty of Berlin and the outbreak of the great war. The central documents of the vast yet incomplete "League of Nations" of which Austria formed a part are presented in this volume, together with a preface by the American editor, a general preface by the Austrian editor, and the latter's intro-



duction to his discussion of the negotiations which led up to the five treaties of the Triple Alliance. Professor Pribram plans to complete the discussion of the secret treaties, and then to embark upon an extensive history of the foreign policy of Austria-Hungary during the same period.

Seventy-two documents are presented here, grouped under twenty-eight heads, and arranged in general in chronological order. The heads may be classified further as follows: three relate to the Austro-German Alliance, three to the League of the Three Emperors, five to the Triple Alliance, and two to Austro-Italian Balkan agreements; five concern the adhesion of Rumania to the Triple Alliance, and two the Austro-Serbian Alliance; five are Mediterranean agreements, two of which are between Great Britain, Italy, and Austria-Hungary, and two between Spain, Italy, and Austria-Hungary, while the fifth is a naval agreement between the powers of the Triple Alliance of as late a date as 1913; there is an Austro-Russian Balkan agreement and a declaration of mutual neutrality by these two nations (1904); and lastly the Russo-German "Reinsurance Treaty" is presented, the only instrument that does not directly involve Austria-Hungary. If any secret treaties were made by Austria with Bulgaria and Turkey, they do not appear.

Professor Pribram's introduction sets forth the salient facts in the development of the treaties of the Triple Alliance. He endeavors to establish that Italy had the best of the bargain in this arrangement, and Austria the worst, but he is on the whole remarkably impartial. He indicates the divergencies between what has been guessed in regard to the treaties, and their actual provisions.

The documents illuminate many events of the time. For example, it becomes clear why Italy and Austria stood firmly together for an autonomous Albania in 1912-13 (p. 197), and why Austria and Russia accepted the Treaty of Bucharest in 1913, with its equilibrium between Bulgaria, Serbia, and Greece (pp. 189, 195). Among the surprising revelations are the provisions, renewed even in 1912, by which the Central Powers might in certain circumstances assist Italy to take French territory in North Africa and even in Europe (p. 251), and by which England was regarded as in full agreement with Austria-Hungary and Italy on a policy for the Near East (p. 255).

In fact, the measure of European unity and the degree of steadiness and faithful adherence to agreed policies that are displayed in the entire scheme go well beyond ordinary cynical affirmations. The

powers of the Triple Alliance, with support to a limited extent from Russia, England, Spain, Serbia, and Rumania, were in agreement toward the maintenance of the *status quo* in domestic and international affairs. As far as appears in the documents, only Italy and Serbia contemplated expansion, the former in Tripoli, Tunisia, and France, the latter southward, perhaps "in the direction of the Vardar as far as circumstances will permit" (p. 137). The system was immensely strong as long as it was conservative, but it could not sustain the results of the expansion of Italy and Serbia, when added to the ambitions of Germany on the sea and in Turkey. Britain and Russia drew away (joining with France in a rival system, the Triple Entente); and in the end Serbia, Italy, and Rumania followed. Then in a sense the outward pull of the four peoples last mentioned destroyed the Austro-Hungarian Empire.

The editing and translating are excellent. All German and French documents are given both in the original and in English translation.

ALBERT HOWE LYBYER.

*University of Illinois.*

*The Russian Pendulum. Autocracy, Democracy, Bolshevism.*

By ARTHUR BULLARD. (New York: The Macmillan Company. 1919. Pp. xiv, 256.)

This little volume is divided into three books: European Russia, Siberia, and What's to be Done. Book I gives the background and reviews the social, political, and economic conditions of European Russia from the March revolution until the time of writing, about July, 1919. Book II deals with the Siberian railway situation and the attempt by Kolchak and his predecessors to organize a stable government. Book III discusses whether the policy of the Allies should be one of "Hands Off!" or of "Stand By."

Few American journalists are as well qualified to write on Russia as the author. He has lived in that country and was interested in its institutions long before the revolution of 1917. He knew many of the Socialist leaders when they lived in exile. He heard them plot the overthrow of governments and he listened to their schemes of social reform. Notwithstanding that, or perhaps because of that, he has failed to be impressed by their idealistic phrases and has demanded from them that their words square with their deeds. This explains why, after watching them in Russia for two years (1917-19), he finds

so little to admire and so much to condemn in "The Bolsheviki at Work."

The part which treats of Siberia is instructive and throws light into many dark corners. The author admits that Kolchak is a better man than he thought him to be when he came into power; that he "is a very astute politician;" that he was trying to do the very best that he could; and that he was more than willing to coöperate with the Allies if they would only agree on a policy. But the problems are so complex, the points of view and interests of the Allies so different, that agreements among themselves are as difficult to reach as among the various factions in Russia.

As between the policy of "Hands Off!" and "Stand By" in Russia, Mr. Bullard argues for the latter. The book was written when the Peace Conference was still in session and at that time he favored recognizing one of the liberal factions and helping it organize a democratic government for Russia. In conclusion the author makes an earnest plea for patience with the Russians and coöperation with them, particularly along educational lines.

Though the material is not well organized and the observations not very profound, yet *The Russian Pendulum* is one of the very few good books in English on present day Russia.

F. A. GOLDER.

*Washington State College.*

*Public Debts in China.* By FENG-HUA HUANG. (Columbia University Studies in History, Economics and Public Law. Volume lxxxv, No. 2. New York. 1919. Pp. 105.)

Dr. Huang classifies the loans as domestic, indemnity and war, railway, general, and provincial (domestic and foreign), and devotes separate chapters to each class. In the main, the work is one of compilation and summarization of the terms of the loan contracts. There is, however, a concluding chapter in which Dr. Huang states certain conclusions and makes some suggestions. The evils arising from the fact that so many of the loans have been complicated with international politics; that old loans are not paid from current revenues, but taken care of by new loans; that money has been borrowed for meeting ordinary operating expenses of government; that foreign loans have been made by administrative subdivisions, and without authority from the central government; that the terms of the loans have often

been too long and too rigid, and have carried with them options for additional loans that are necessarily disadvantageous to China; that railway loans have in so many cases provided for foreign operating control of the lines concerned; all of these evils, of which every student of Chinese affairs is aware, are pointed out.

As regards constructive criticism, Dr. Huang recommends that every possible opportunity be seized by the Chinese government to consolidate its public loans, to simplify and moderate their terms, and to take steps looking towards their payment from taxes or other ordinary sources of revenue. In his concluding paragraph the fact is recognized, that these results cannot be reached until parliamentary control over public finance is more complete, and a more honest and efficient body of public servants is secured. The monograph closes with the sentence: "Perhaps for the time being it may be necessary to supplement the civil service system with a voluntary and non-political employment of foreign technical experts for assistance, as China can reform and reorganize the whole country more expeditiously by relying on expert guidance." The reviewer would make this statement still stronger. There must, in his opinion, be not only guidance but a certain amount of overhead control. The foreign experts must be authorized not only to advise, but, in many matters, to dictate.

W. W. WILLOUGHBY.

*Johns Hopkins University.*

*The Conflict of Laws Relating to Bills and Notes.* By ERNEST G. LORENZEN. (New Haven: Yale University Press. 1919. Pp. 337.)

In these days when so much commercial intercourse hurdles state and national boundaries, it is little less than a disgrace that the rights flowing from commercial paper should be so often dependent upon the choice of a forum by the unsatisfied creditor. Yet the jurisdictions of the world vary not only in their law of bills and notes but in their law of conflict of laws applicable to bills and notes. This sad state of affairs has prompted Professor Lorenzen to make an exhaustive study of the divergencies that exist, to outline the practical and theoretical considerations for and against each particular rule, and to suggest which should be adopted in a uniform code so that the evils of the present chaos may be abolished.

The matters dealt with are highly technical, and the work offers a diet that can be digested only by specialists. It affords a valuable model for similar studies in many other fields and serves to remind us that many important problems of government remain for consideration after the last college course in political science has been completed. Professor Lorenzen shows some signs of enjoying more faith in the possibility of attaining uniformity of law than the present state of the world justifies. People do not lightly give up the rules with which they are familiar, even when convinced that both theoretical and practical considerations are against them. But such studies as this are necessary first steps in any effort to improve the situation.

THOMAS REED POWELL.

*Columbia University.*

#### MINOR NOTICES

*Ludendorff's Own Story* (N. Y. and London. Harper & Bros., 2 vols., 477, 473 pp.), like other personal narratives of the world war already published, is of interest, not only for the record of military events by one of the most prominent military leaders, but also for the light it throws on the mental attitude and processes of the author. Students of government and political science will find in it information on the administration of occupied territory in the East, difficulties due to the absence of a unified command in the Eastern theater, conflicts between the military and political authorities in the German government, and the increasing activity of the army general headquarters in political and diplomatic affairs. After an introductory chapter on "My Thoughts and Actions," and one on "Liège," the main body of the work falls into two large divisions, dealing with the author's service as chief of the general staff on the Eastern front (from August 22, 1914, to August 28, 1916), and as first quartermaster-general (from August 29, 1916, to October 26, 1918).

An interesting account of the way in which the work of the committee on public information was carried on during the war is contained in Vira B. Whitehouse's *A Year as a Government Agent* (Harper & Bros., 316 pp.). The author was in charge of the committee's affairs in Switzerland and her account of her difficulties and achievements, the former particularly, is both readable and illuminating. Of especial

significance is the story of this strenuous woman's encounter with the American diplomatic representatives at the Swiss capital. It indicates that the liaison between our state department and Mr. Creel's committee was not always of the most intimate character. Doubtless there is another side to the whole narration, but the reader will find in this book some surprising evidence of the defective team play which marked our propaganda efforts during the days of the great emergency.

Under the title *Man or the State* (N. Y., Huebsch, 141 pp.) Waldo R. Browne has put together a group of essays by several of the leading individualist and philosophical anarchist writers of the nineteenth century, namely—Kropotkin, Buckle, Emerson, Thoreau, Spencer, Tolstoy, and Wilde. The editor's purpose is to make more available to the present generation typical specimens of a way of thinking about politics long since grown unfashionable. He might well have included illustrations of the thought of certain other writers akin to the above, notably Nietzsche, whose message, such as it is, is no less inaccessible to the modern reader.

Francis Neilson's new book on *The Old Freedom* (N. Y., Huebsch, 176 pp.) is a plea for "giving community values to the community," thus restoring "natural rights and economic freedom." There are chapters on such topics as "Democracies of the Past," and "Municipalization versus Nationalization." The author writes in an effective and interesting way although the arrangement of his material would stand improvement.

As an antidote for Mr. Neilson's title, perhaps, Randolph Bourne's *Untimely Papers* (N. Y., Huebsch, 230 pp.) leads off with a chapter on "The Old Tyrannies." Other essays in this book, such as "The Collapse of American Strategy" set forth the philosophy of the conscientious objector.

Mr. James Brown Scott has added to the two volumes on the *Judicial Settlement of Controversies between States of the American Union*, which were reviewed in our last issue, an additional volume containing an analysis of the decisions (Oxford, The Clarendon Press, 548 pp.). This volume, like the others, is issued under the auspices of the Carnegie Endowment for International Peace.

A number of official and other publications on the reconstruction or reorganization of state government have been published within recent months. *The Report of the Reconstruction Commission* of New York State, issued in October, 1919, is a comprehensive document of 413 pages, analyzing the present administrative organization of the state, and presenting a definite plan for a more consolidated system. Brief reports have been made by the Michigan state reconstruction commission (26 pp.) and by a special legislative committee in Wisconsin (30 pp.). The North Carolina Club has issued a pamphlet on *State Reconstruction Studies* (57 pp.), outlining the plans of the state reconstruction commission, and for a series of coöperative studies being undertaken by club committees. The Mississippi Historical Society has published, as volume 3 of its centennial series, a study of *Public Administration in Mississippi* (278 pp.), by Professor A. B. Butts of the state agricultural and mechanical college.

The legislative reference bureau of Illinois, under the superintendence of Dr. W. F. Dodd, has prepared and published for the Illinois constitutional convention a series of fifteen bulletins, aggregating about 1200 pages, on the problems to come before the convention, with a consolidated index. These include studies on the organization and procedure of the convention, the various articles of the constitution, and newer social, industrial and political problems. Another pamphlet gives the texts of the several Illinois constitutions, with the corresponding sections of each constitution arranged together for purposes of comparison. A larger pamphlet of 300 pages presents the present constitution, with somewhat detailed annotations under each section, based on judicial decisions, forming in effect a substantial volume on the constitutional law of the state.

*Teachers' Pension Systems in the United States*, by Paul Studensky, is the latest volume in the publications issued by the Institute of Government Research (Appleton, 460 pp.). Those who are interested in the problems of state and municipal school administration will find a great deal of useful information in the various chapters which deal with the pension systems of today. The author points out that many of our state and local pension systems are unscientific and that the reserves behind them are altogether inadequate. Likewise he presents an analysis of those pension plans (particularly in New Jersey, Ohio and Vermont), which have now been placed upon a proper basis. The

whole study is a notable contribution to the literature of a complicated but important phase of public administration.

The third volume in a series of books dealing with the history of the English laboring classes, by J. L. and Barbara Hammond, has been published by Longmans, Green & Co., under the title *The Skilled Laborer, 1760-1882*. Previous volumes have dealt with the town laborer and with the village laborer during the same period. In this book, as might be expected, attention is particularly devoted to the factory workman during the era of the industrial revolution. Unfortunately there is not much information concerning the relation of labor to the development of English politics during the period prior to the great reform statute, although this aspect of things is not wholly neglected.

*Currency and Credit*, by R. G. Hawtrey (Longmans, Green & Co., 393 pp.), adds another to the legion of available books which deal with the ramifications of money. The author's apology, which may be readily accepted, is that he deals with the subject in the light of the transcendent changes which have taken place within the last few years. There are interesting chapters on "War Finance" and "War Inflation," two topics which may be logically within the circle of the economist, but which the student of contemporary politics can hardly afford to disregard.

A new book by the well-known economist, Professor Irving Fisher of Yale University, is entitled, *Stabilizing the Dollar* (Macmillan, 305 pp.). The initial postulate of the volume is that the purchasing power of the dollar remains uncertain and variable. The chief aim of the volume is to demonstrate that permanent stability can be secured by methods which the author sets forth in detail. The close association between economic and political problems at the present day warrants for this book the attention of political scientists.

The Macmillan Company has published for Professor F. W. Taussig of Harvard a volume on *Free Trade, The Tariff and Reciprocity* (219 pp.). The opening chapter deals with the present position of the doctrine of free trade, with the conclusion that however widely this doctrine may have been rejected in the world of politics, it still holds its own in the sphere of the intellect. Then follows an interesting essay



on "Abraham Lincoln on the Tariff," with an exposure of a popular myth concerning Lincoln's tariff views. Other chapters deal with various economic aspects of the tariff and the book concludes with a discussion of tariff problems after the war.

F. J. C. Hearnshaw's *Europe in the Nineteenth Century* (Macmillan, 180 pp.) gives a bird's-eye view of the subject, including a preliminary chapter on democracy and the French Revolution. The volume is an abridgment in substance of the author's *Main Currents of European History*, published a few years ago, but it has not been extracted from the latter book by scissors-and-paste-pot methods. Mr. Hearnshaw tells his story with skill and vitality.

Messrs. Fleming H. Revell Company have brought out recently a volume by Dr. Newell Dwight Hillis on *Rebuilding Europe in the Face of World-Wide Bolshevism* (256 pp.). The arrangement of the book is by countries, the contemporary problems of reconstruction in Germany, France, Great Britain, the United States and "the little nations" being discussed in successive chapters.

Kevork Aslan's little book on *Armenia and the Armenians* (Macmillan, 138 pp.) contains a sketch of this unhappy country's history from earliest times to the outbreak of the great war. It is a concise and readable outline, giving not only the main currents of political development but also some information concerning economic and social organization.

The Carnegie Endowment for International Peace has issued in its series of Preliminary Economic Studies of the War a volume on *British Labor Conditions and Legislation during the War*, by Professor M. B. Hammond of Ohio State University.

Students of the coöperative movement will find some useful information, lucidly set forth, in Albert Sonnichsen's *Consumers' Co-operation* (Macmillan, 223 pp.). The book outlines the origin and development of retail coöperation both in Great Britain and on the Continent; it also devotes attention to the coöperative movement as a factor in the social revolution. One rather brief chapter is devoted to coöperative undertakings in the United States.

*The Scientific Spirit and Social Work*, by Arthur James Todd, (Macmillan, 212 pp.) deals with the philosophical and psychological principles upon which the author believes sound social work to be based. Some chapters on the trend of social movements and their relation to other branches of reform are included in order to give social workers their orientation.

In a small volume on *The Unsolved Riddle of Social Justice* (John Lane Co., 152 pp.) Professor Stephen Leacock advocates a progressive movement of social control, based upon the general principle of equality of opportunity. The chief immediate direction of social effort should be to secure adequate food, clothing, education and an opportunity in life for the children.

Bertram Pickard's booklet on *A Reasonable Revolution* (Macmillan, 78 pp.) is a discussion of the state bonus scheme, and a proposal for a national minimum wage.

The Weil Lectures, delivered at the University of North Carolina in 1919 by Professor Jacob H. Hollander of Johns Hopkins University, have been published under the title of *American Citizenship and Economic Welfare* (Johns Hopkins Press, 122 pp.).

*The Opium Monopoly*, by Ellen N. La Motte (Macmillan, 84 pp.), contains a discussion of the oriental opium monopolies together with a history of the trade in China.

A short history of *Taxation in Nevada* (199 pp.) by Professor Romanzo Adams of the University of Nevada has been published by the Nevada Historical Society.

*The Railroad Problem, A Suggestion*, by Walter W. Davis, is published by Messrs. G. P. Putnam's Sons (128 pp.). It is a plan for an undivided administration of the railroads.

The University Extension Division of the University of Kansas is sponsor for an interesting study of *Armourdale: A City within a City*, by Manuel C. Elmer (Bulletin of the University of Kansas, Vol. 20, No. 12).

*Fundamental Legal Conceptions and Other Legal Essays*, by the late Wesley Newcomb Hohfeld, has been reprinted from the *Yale Review* by the Yale University Press (114 pp.).

Professor P. Orman Ray's article on "The World-Wide Woman Suffrage Movement" has been reprinted in pamphlet form from the *Journal of Comparative Legislation*.

*A History of the Bankruptcy Law*, by F. Rogers Noel (Washington, Potter and Co., 209 pp.), presents a historical account of the bankruptcy provision in the United States Constitution and of congressional legislation thereunder.

Two essays by Professor George Burton Adams, on "The British Empire and a League of Peace" and on "Federal Government: its Function and Method," have been published together in a small volume (Putnam's, 115 pp.).

## RECENT PUBLICATIONS OF POLITICAL INTEREST

### BOOKS AND PERIODICALS

BEATRICE O. ASHTON AND CLARENCE A. BERDAHL

#### AMERICAN GOVERNMENT AND PUBLIC LAW

##### *Books*

*Babson, Roger W.* W. B. Wilson, first secretary of labor in the United States, and the department of labor. Pp. 266. N. Y., Brentano's.

*Bond, B. W.* The quit rent system in the American colonies. London, Oxford Press.

*Clark, Champ.* My quarter century of American politics. 2 vols. N. Y., Harper & Bros.

Educational legislation and administration in the state of New York from 1777 to 1850. Supplementary Educational Monographs, vol. 3, no. 1. Chicago, Univ. of Chicago Press.

*Hobbs, William Herbert.* Leonard Wood, administrator, soldier, and citizen. Pp. 272. N. Y., Putnam's.

*Hollander, Jacob H.* American citizenship and economic welfare. Baltimore, Johns Hopkins Press. 1919.

*Howe, M. T. De Wolfe.* George von Lengerke Meyer; his life and public services. Pp. 556. N. Y., Dodd, Mead & Co.

*Mohun, Barry.* The income tax law, the war-profits and excess-profits tax law, . . . as contained in the revenue act of 1918. Pp. 126. Washington.

Report on the foreign service. National Civil Service Reform League. Pp. 322.

##### *Articles*

**Amending Power.** The limitations upon the amending power. *William L. Marbury.* Harvard Law Rev. Dec., 1919.

———. Intrinsic limitations on the power of constitutional amendment. *George D. Skinner.* Mich. Law Rev. Jan., 1920.

———. The amendatory power under the Constitution, particularly with reference to amendment 18. *Fred B. Hart.* Central Law Jour. Mch. 26, 1920.

**Americanization.** Does Americanization americanize? *Gino Speranza.* Atlan. M. Feb., 1920.

———. Americanization: the other side of the case. *John Kulamer.* Atlan. M. Mch., 1920.

———. My principles of citizenship. *Calvin Coolidge.* Forum. Jan., 1920.

**Budget.** A national budget system. *Editor.* Const. Rev. Jan., 1920.

**Confederate Cabinet.** The last meeting of the Confederate cabinet. *James E. Walmsley*. *Miss. Valley Hist. Rev.* Dec., 1919.

**Communism.** Revolutionary communism in the United States. *Gordon S. Watkins*. *Am. Pol. Sci. Rev.* Feb. 1920.

**Congress.** Dramatic scenes in my career in Congress. I, II. *Joseph G. Cannon*. *Harper's*. Dec., 1919, Mch., 1920.

———. The special session of Congress *Lindsay Rogers*. *Am. Pol. Sci. Rev.* Feb., 1920.

**Constitution.** The Americanism of the Constitution of the United States. *William W. Morrow*. *Const. Rev.* Jan., 1920.

———. The worship of the constitution. *Edward S. Corwin*. *Const. Rev.* Jan., 1920.

**Constitutional Law.** Constitutional law in 1918-1919. II. *Thomas Reed Powell*. *Am. Pol. Sci. Rev.* Feb., 1920.

**Constitutional Limitations.** Implied powers and implied limitations in constitutional law. *W. F. Dodd*. *Yale Law Jour.* Dec., 1919.

———. Do constitutional limitations control reformers? *J. K. B.* *Yale Law Jour.* Feb., 1920.

**Control of Corporations.** The next step in the national control of corporations. *James H. Wilkerson*. *Central Law Jour.* Feb. 13, 1920.

**Freedom of Speech.** Free speech in time of peace. *K. N. L.* *Yale Law Jour.* Jan., 1920.

———. What sedition acts mean to free speech. *George Huddleston*. *Searchlight*. Jan., 1920.

———. Power of government over speech and press. *Fred B. Hart*. *Yale Law Jour.* Feb., 1920.

———. Freedom of speech and of the press—resolution of the Missouri Bar Association. *William G. Hale*. *Ill. Law Bull.* Feb., 1920.

———. Constitutionality of sedition laws. *M. G. Wallace*. *Va. Law Rev.* Mch., 1920.

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# The American Political Science Review

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Vol. XIV

AUGUST, 1920

No. 3

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## THE PLURALISTIC STATE

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The doctrine of the pluralistic state has found its most outspoken advocate in this country in Mr. Harold J. Laski,—an Englishman, recently of Harvard University, and more recently still called back to England to the London School of Economics of the University of London. A number of channels of thought have come together in Mr. Laski's present formulation of the doctrine. Among those in England from whom he received much inspiration and suggestion may be mentioned the late Professor Maitland, and Dr. J. Neville Figgis, as well as Mr. Graham Wallas, and Mr. Ernest Barker.

Professor Maitland's work in this field is closely associated with that of Dr. Otto Gierke in Germany, to the third volume of one of whose works, *Das Deutsche Genossenschaftsrecht*, which Professor Maitland translated, he wrote his famous Introduction in which he stated his own views with regard to the real and truly corporate personality, not only of the state but of other social groupings as well. Another of Gierke's works is *Die Genossenschaftstheorie*, in which it is attempted to show, to quote Dr. Figgis, "how under the facts of modern life the civilian theory of corporations is breaking down on all hands, and that even in Germany, in spite of the deliberate adoption of the Romanist doc-

trine, the courts and sometimes even the laws are being driven to treat corporate societies as though they were real and not fictitious persons, and to regard such personality as the natural consequence of permanent association, not a mere mark to be imposed or withheld by the sovereign power."<sup>1</sup> Dr. Figgis's main contribution was through his *Churches in the Modern State*, and Graham Wallas's, chiefly in his *Human Nature in Politics* and *The Great Society*. Mr. Barker's theory is found especially in his paper "The Discredited State," published in *The Political Quarterly* for February, 1915.

Among French writers, Mr. Laski probably quotes M. Léon Duguit, for twenty-five years or more professor of law at the University of Bordeaux, as often as anyone. M. Duguit is the author of many works, in which among other things he claims to establish what he terms a juridical limitation on state sovereignty as opposed to the doctrine of the absolute state. The theory of syndicalism in France, also, as well as that of guild socialism in England, has made its contribution to the content of Mr. Laski's thought, and many other influences might be mentioned. Mr. Laski's own main works on the subject, in which he presents a very complete pluralistic doctrine, have been his *Problems of Sovereignty* and more recently his *Authority in the Modern State*.

Closely associated with the pluralistic doctrine in America also, although not in reality identified with it, is the recent work of Miss M. P. Follett, *The New State*. In this, she lays great stress as do the pluralists, on group organization as an important key to modern social and political problems. But, unlike the pluralists, she denies to the separate groupings an isolated sovereignty, while in their interdependence and interpenetration she finds the unifying elements of the one supreme sovereignty of the new democratic state of the future.<sup>2</sup>

The doctrine of the pluralistic state, as can be inferred from its name, stands in opposition to that of the monistic state, which with all that it implies has long been the accepted state theory of political science. The monistic theory found its origin

<sup>1</sup> Figgis, *Churches in the Modern State*, pp. 55, 56.

<sup>2</sup> See especially *The New State*, pp. 282 ff.



in antiquity, and during the middle ages survived the competition, on the one hand of the "Christiano-Germanic"<sup>3</sup> idea of the liberty and sovereignty of the individual, and on the other of the medieval idea of the essentially federalistic nature of society, until in the sixteenth century it was given by Bodin what has become its classic modern form. The Austinian formulation of the doctrine of sovereignty, to the essence of which, in spite of much adverse criticism as to form, the orthodox political scientist still clings, is but a further and more explicit statement of the theory enunciated by Bodin.

According to the monistic theory of the state and of sovereignty, the state is defined, to begin with, as the political organization of society. But the term political must itself be defined, and by political organization the adherents of this school mean, that organization which may be observed as enforcing its will, in the last analysis, by coercion through the use of physical force. It is to this form of organization, which they find practically universal in society, that they give the name political to distinguish it from other forms of social organization and grouping. On further analysis also they claim to discover, as would obviously be necessary, that the political organization has at its disposal the major physical force of the community, and to the element in the political organization which thus controls the major physical force the name sovereign is given, and its power thus to enforce its will is called sovereignty. This is really only another way of saying that whenever in any organized social grouping there is a factor to which for any reason the possessors of the major physical force are so bound that they respond with their physical power to the call of this controlling factor for assistance in enforcing upon the recalcitrant obedience to its command, there we have a political organization or the state. It will be noted that according to this analysis such enforcement becomes necessary, or seems to the controlling factor to be necessary or desirable, because there are in the community those who oppose its will, and whom it can thereby coerce into obedience.

<sup>3</sup> Gierke, *Political Theories of the Middle Age*, p. 88.

Of such a political community other characteristics, also, are pointed out by the orthodox school:

In the first place, they affirm, the political organization has a territorial basis; that is, the exercise of its coercive power is extended over the people on a given territory, such territory being limited only by the extent of the control exercised by the sovereign power.

Secondly, in a given territorial political organization, they declare, there is and can be only one such sovereign power as they describe; that is they affirm unity as a necessary characteristic of the state. For by their very definition they assert that among the many different bonds that are at all times operating to unite men in society, there is one stronger than the others, to which they give their preference and to which they give their physical support when it is demanded, even though other allegiances may also be demanding it. If a man cannot choose between two loyalties or allegiances, he is, so far as state organization is concerned, rendered impotent and is at the mercy of those who can and do make the choice, and who support their choice with their physical force. If different men in a social organization choose different allegiances for such physical support, then the result, they say, is, of necessity, either conflict between the two until it is established which is in reality the stronger and able to subdue and hold subject the other, or else, if neither is able to prove itself decisively the stronger, the setting up of two political organizations, and two unified states instead of one.

Thirdly, they declare that this sovereignty that they are describing is absolute, all powerful, unlimited, final, supreme. It is absolute, supreme, all powerful, largely because of its especial nature; that is because the weapon of which it makes use is just that weapon against which, temporally and finitely speaking, nothing can prevail, and it is essentially with temporal and finite concerns that political society is occupied. The spiritual weapons of the church, for instance, stand out in marked contrast to that wielded by the state, since after the spiritual penalties have all been inflicted, and the church can go no further, the individual still, to all intents and purposes occupies the same

place in political society that he occupied before. And likewise with regard to economic penalties imposed by an economic group or by the state; they may be such that if rigorously applied, they would cut off the springs of human life; but, inasmuch as they are more indirect, they are more uncertain in their working, and moreover, for their final application they must often call upon the arm of the physical power. The coercive power of the state, on the contrary, can and does in the last resort remove all opposition by removing those who oppose its will. As an absolute, supreme, all powerful organization, the power of the state, also, is unlimited according to this doctrine. For only that which is not limited by something stronger than itself, can be absolute in this sense.

Fourthly, the American exponents, at least, of the orthodox theory also make a distinction between what they regard as the original fundamental political organization or state, and the machinery through which it expresses its sovereign will, to which machinery the name government is given. That which they term the state acts of its own initiative and energy and power; that which they term government is only the agent of the state, and is clearly dependent on state power and ultimately on state will. This distinction has been perhaps most clearly set forth by Professor Burgess of Columbia University, and may be cited as one of the chief contributions of America to political thought. The political organization in this country has made it easier than in European countries to perceive the distinction; and the failure of European writers to recognize it may be partly responsible for the conflicting views.

Fifthly and finally, the orthodox theory holds that, human nature being what it is, true and assured liberty does and can exist for the individual or the group of individuals only as created and guaranteed by the state in the form of legal rights; that the so-called natural rights to life, liberty, equality, happiness, property and so forth, amount to little or nothing except as the state guarantees them and stands behind them, inasmuch as, even if they were the gift of nature, about which there is much and grave doubt, they could always be taken away by some one

better endowed by nature unless the state should interpose its superior power in their defense.

The political monists do not, on the other hand, maintain that this sovereign power is necessarily actively exerted over all its subjects in relation to all details of life, at all times. They maintain only that it can and does fix the scope of its interference and that it can exert itself where and when it will, and that if it refrains, it does so because it deems it expedient so to do. Nor do they maintain or admit that fear is the only motive power that binds the group together and insures obedience. In the vast majority of cases the sense of solidarity, and the fundamental loyalties that operate to insure support for the sovereign power, are necessarily and naturally active also in insuring obedience to that sovereign power, and the maintenance of law and order in the group. It is only against the recalcitrant that the force of the state must either potentially or actively be exerted, and that is in, at most, a small minority of cases. In fact, it is, they hold, only because of the comparatively few recalcitrant and disagreeing ones that political organization is deemed necessary. If all human nature, or even all of that in one group were entirely and at all times united in one superior loyalty, that would in itself be sufficient to hold the group together and no other means would appear as necessary or desirable. That not being the case, the controlling factor in the group has, as a practically universal thing, resorted to the all-compelling force of physical power as sanction for its will, and hence the universality of political organization among men. Finally, political monism does not necessarily, as such, maintain that the all powerful sovereign is freed from the obligations of the moral law. This point of view is characteristic only of some exponents of the doctrine. All that monism, as such, asserts in this connection, is that unless the sovereign power itself wills to obey the moral law, there is no earthly power that can force it to do so. It might be added here that there is nothing inherent in pluralism to assure obedience to the moral law.

Such is the doctrine of the unified monistic state, for which is claimed, as we have seen, direct and absolute power over each individual subject as well as over all groups of subjects. The attention of the political monist has been directed chiefly upon this power, and he has been very largely concerned with the attempt to reduce all forms of group life to a strict legal definition in order to bring them within the canons and the control of law. In so doing he has, in some part at least, lost sight of the fact that during these recent times human society has been becoming infinitely more complex, that organization has for a variety of reasons been going on among men with amazing rapidity, and that some of their most vital interests have centered in these organizations within the larger society. "Men turn," says one adherent of the pluralist doctrine, "to fellowship as the compass needle turns to the pole, and they form themselves into groups and societies and communities of various kinds, religious, cultural, social, economic. They have churches, the bank clearing house, the medical association, the trade union, and wheresoever there is an interest strong enough to form a nucleus you will find men gathering around it in an association."<sup>4</sup> The attention of the pluralist, however, has been arrested by these groups and by their increasing influence not only over their members, but in the body politic, and in his attempt to interpret this group activity and influence, he has set up the doctrine of the pluralistic state.

The pluralist begins his attack on the monistic doctrine by denying what the monist states as the underlying facts of political organization, and especially the essential unity and absoluteness of the state and its sovereignty. He does not see in the state a social grouping unique in kind and paramount to all others, but declares that the political group is only one among others (of which there is such bewildering variety at the moment) of essentially like or similar nature, over which moreover, he claims, the state is not, and cannot be, supreme—the political loyalty, he declares, being only one among many loyalties by

<sup>4</sup> *The Nation*, July 5, 1919, p. 21.

which every individual is bound, and not of a peculiar and superior validity.

Dr. Figgis cites as an instance of the inability of the state to control other social groupings within it, the fact that "in regard to the immigration law in South Africa, it was admitted that the imperial Parliament dare not override the will of the local bodies even though they were doing a manifest injustice to their fellow subjects."<sup>5</sup> Mr. Laski mentions as illustrative of the same impotence of the so-called sovereign state the inability of Parliament to coerce Ulster in 1914, the ability of the women suffragists to defy the law in England for a long period before the war, and the powerlessness of the state, as he says, to force the subjection of conscientious objectors to the Military Service Act of 1916. He draws therefrom the conclusion, to cite his own words, "that government dare not range over the whole area of human life;"<sup>6</sup> in which statement also he means to include his denial not only of the supremacy, but also of the unity of the state. And Gierke maintains that the developing theory of the absolute unitary state in the middle ages as postulated of the empire stood in sharp contradiction to the actual facts of the situation.<sup>7</sup>

The adherents of the pluralistic state, however, go much further than this. Comparatively little of their polemic is concerned with the denial that the state can or does control everything within its jurisdiction. By far the greater part of it is taken up with a discussion not of fact, but of right, and the transition from the one point of view to the other is by such subtle and imperceptible steps, where indeed the two are not bound up inextricably with each other, that it becomes very difficult to know in the specific case whether one is within the realm of fact or of theory. Laski continues the paragraph from which I have already quoted, in which he denies that government dare "range over the whole area of human life" [and note the word "dare" used here] as follows: "No government, for instance, dare prescribe the life of the Roman Catholic Church. Bismarck made the

<sup>5</sup> *Churches in the Modern State*, pp. 84-85.

<sup>6</sup> *Authority in the Modern State*, p. 45.

<sup>7</sup> *Political Theories of the Middle Age*, p. 95.

attempt and it is doubtful if it will be repeated. Where alone the state can attempt interference with groups other than itself, is where the action of the group touches territory over which the state claims jurisdiction. There is no certainty that the state will be successful. There is even no certainty that it merits success." [Note, again here, the shift from the "is" to the "ought."] "It may indeed crush an opponent by brute force." [Note here the acknowledgment of a possible fact.] "That does not, however, establish right, it is merely the emphasis of physical superiority. The only ground for state success is where the purpose of the state is morally superior to that of its opponent. The only ground upon which the individual can give or be asked his support for the state is from the conviction that what it is aiming at is, in each particular action, good . . . . It deserves his allegiance—it should receive it, only where it commands his conscience."<sup>8</sup> This is only one of many similar instances, in all of which Mr. Laski's main insistence is that the state ought not to interfere with other allegiances which may bind its members into other social groupings.

In Gierke's work also we have a curious and difficult intermingling of the "is" and the "ought to be." Gierke's main object is to show the mediaeval theories of the state and of other social groups, whereby under the influence of Roman law all forms of group life tended to be put into the category of the *persona ficta* of the corporation and to be considered solely as created by and existing at the will of the political power as expressed in law. Throughout the whole, however, there runs Gierke's constant protest against what he believes the essential wrongness of this point of view and his constant assertion that these social groupings are real rather than fictitious personalities, that they exist of themselves, that they come into existence and develop by a natural process, and that they are therefore possessed of "natural rights" which, since they are quite independent of the state, the state is in duty bound to respect, and which therefore constitute a real limitation upon the sovereignty of the state.

<sup>8</sup> *Authority in the Modern State*, pp. 45-46.

In spite of this, there is also evident throughout the whole the tacit acknowledgment that, as a matter of fact, the state was actually controlling the forms of group life within itself, though wrongly, again, as he believes.

Such then are the main contentions of the pluralists both with regard to the "is" and the "ought to be" of political science. Other points in their doctrine will appear as we examine the main lines along which the orthodox school attempts to answer or to criticize the pluralistic doctrine. In the first place, the orthodox theorist would unmistakably assert that he does as a matter of fact discover in political society a supreme and unitary control, and in making this assertion he would find great comfort and support in the knowledge that Dr. Figgis himself goes in one place so far as to say: "It [the orthodox theory] is true to the facts only in a cosy, small and compact state [but 'true,' it is to be noted, nevertheless]—although by a certain amount of strained language and the use of the maxim 'whatever the sovereign permits, he commands,' it can be made not logically untenable for any conditions of stable civilization."<sup>9</sup> This is an acknowledgment on Dr. Figgis's part of all that the monist would ask him to admit.

In the second place he would point out that the issue must always be kept clear and distinct between the study of things as they are, and that of things as they ought to be. He would assert that the first concern of political science is to discover and to establish the positive laws of political phenomena as it finds them actually to be, and that only after it has accomplished that is it ready to pass judgment upon the rightness or the wrongness, morally speaking, of the facts it has discovered, or to enter upon the matter of political and governmental reform.

Thirdly, he would call attention to the distinction between state and government, as already noted, and he would point out that he has never denied that there are of necessity limits to governmental power, inasmuch as the government is only the

<sup>9</sup> *Churches in the Modern State*, p. 224.



agent of the state and as such is and must be subject to, and limited by the state's sovereign will. He would further call attention to the fact, as he sees it, that the instances cited as showing that the state is not all powerful against certain individuals or groups, are really instances of governmental rather than of state impotence, and that in none of these instances was the final power of the community invoked, so that one cannot state with definiteness where the real strength in the given situation lay. He would hold that the apparent inability of the government to deal adequately with the opposition can be amply accounted for without any impairment of the sovereignty of the state, and in any one of a variety of ways:—either, for instance, that in passing the law in question the government was not accurately registering the actual sovereign will of the state, inasmuch as it failed to take into consideration the attitude of those who now defy the law, whose will is in reality an integral and conditioning factor in the sovereign will and must be considered as such; or, as another possibility, that under the given circumstances the government, and even perhaps that which has been the state behind the government, has deemed it inexpedient to push the matter to an actual test. Without such test, however, it would, he declares, be impossible to determine where the power of control really lies; that is, whether, sovereignty still resides in that which has been the controlling factor, or has passed to the opposing group or groups.

Fourthly, orthodox political science will maintain that inasmuch as by reason of its nature the political organization is an all inclusive organization in a given territory, and also, by reason of its nature, again, the most powerful organization, it must in a sense include and be in a position to control all other social groupings. Political monism, as such, does not claim, however, that the state creates these groupings; it is well content to leave to them an origin and a natural existence of their own. Nor does it attempt to reduce them to the position of the corporation, the *persona ficta* of Roman law. All that it does claim is that of necessity the state is, as a matter of fact, stronger than any one of them, and that it therefore can control them, and that, more-

over, the measure of control which it actually exercises is that measure which it wills to exert or deems it expedient that it should exert. It does however, as already pointed out, deny that these social groups are possessed of any natural rights which in effect limit the power of the state. It believes that if the social groupings are possessed of true rights, they have them because, and only because, the sovereign power of the state guarantees them against any who would attempt to take them away.

Fifthly, the orthodox scientist would again call attention to the point, stressed earlier in this paper, that he in no way necessarily denies that the state ought to obey the moral law. All that he definitely maintains in this connection is that the moral law does not impose any positive, coercive, political or legal limitation on state action, or on sovereignty, but that as the state wills to act, so it acts—either morally, immorally or unmorally, as it chooses, inasmuch as, even though it may will to act contrary to the moral law, there is obviously no higher human authority to coerce it.

Sixthly, and not least importantly, he would voice his concern over what he sees as the very probable practical results of the pluralists' teaching. If, as the pluralist holds, the state is not all powerful, but the political loyalty only one of many loyalties, more or less equally strong, then obviously something approaching chaos may result, if these coördinate loyalties are numerous and potent and conflicting enough. Moreover, even if, he says, we give the pluralist the benefit of the doubt, and see in his argument only a plea that the state ought not to bind anyone or any group against its consent, then, also, something very like anarchy or chaos is apt to ensue. The question as to the right or the righteousness of the state in demanding the unconditional obedience of its subjects, or, from the other point of view, of the right or the righteousness of the subjects in resisting the state, is one of the most difficult of political science; but it seems quite clear that to count the political allegiance as simply one among many allegiances of approximately equal weight, and to establish the general principle that the active consent of the governed is a necessary precedent to all obedience even in the

individual case, must tend to lay the way open to a very disorganized and casual political organization, and one which must inevitably endanger what are usually regarded as the prime functions of that political organization, namely, the maintenance of law and order, and the guaranty of liberty and of rights.

To the mind of the orthodox scientist, then, the chief difficulty with the validity of the pluralist doctrine is to be found in its confusion of thought as seen in its failure to distinguish, first, between state and government, and secondly, between the study of the facts of political organization, as, whether for good or for ill, they actually are, and the exposition of political organization as it ought to be. The other points of criticism, also, center around these two, for the doctrine of natural rights itself, which the pluralist is resuscitating for his minor social groupings and even for the individual, is the result of a confusion in thought between the concept of things as they are and things as it seems that they morally and ethically ought to be. Moreover, the declaration that men or groups of men must never be bound against their consent is in reality the postulation of an ideal state of things, in which there would be either entire righteousness and wisdom and agreement among men, or at least enough to insure the order and stability of the body politic. Figgis himself acknowledges that: "To prevent injustice between them [social groupings] and to secure their rights a strong power above them is needed. It is largely to regulate such groups and to insure that they do not outstep the bounds of justice that the coercive force of the state exists. It does not create them; nor is it in many matters in direct and immediate contact with the individual."<sup>10</sup> This is, it may be noted, all, in effect, that the orthodox point of view necessarily claims for the sovereignty of the state.

After all this criticism, however, orthodox political science is still obliged to acknowledge certain great and valuable contributions which the pluralist doctrine has made and is making to

<sup>10</sup> *Churches in the Modern State*, p. 90.

political thought, especially in the troubled situation of the present; and to see in it a righteous protest against some unfortunate developments within the orthodox doctrine itself.

In the first place, the pluralist teaching puts a timely emphasis on the fact that states are, after all, despite their legal omnipotence, subject to the moral law. In so doing it offers a very necessary protest against some developments of the doctrine of sovereignty, especially in German philosophy, according to which the state was not only all powerful, but also all righteous, even partaking of the nature of the divine, an end and a morality in itself, and therefore always to be obeyed no matter what it might command, a point of view, it must be noted, not at all a necessary deduction from the orthodox doctrine.

Moreover, the pluralist doctrine in urging what it describes as the natural rights of all social groupings, with which the state cannot rightly interfere, very properly utters a warning against overinterference on the part of the state with the concerns of the individuals and groups within it. It is significant, however, in this connection, to note that those who urge the pluralist doctrine most warmly would, at least in many cases, provide through other forms of social grouping, for a large amount of supervision over the specific activities of the group on the part of the organization controlling it. And if it be objected that this control is not a coercive control, the question arises as to how it is to be assured, and also as to what is to happen when the will of the other group or groups conflicts with that of the state. For it is only in the case of conflict that, according to the orthodox theory, the active force of the state is, or needs to be invoked. So long as men are of one mind and one will the political organization as such may remain in abeyance. Many of us are never aware of the restraining force of the law; it is only when one's will or the will of others finds itself in opposition to the state will that the political machinery as distinguished from the machinery of other social groupings is put into motion. And just as soon as the minds and the wills of men have become so unanimous that no conflict appears, the political organization as we have known it can either disappear or change its essential character. Then

we shall have, and shall need to have no state. One cannot escape the feeling that what the pluralist has really in mind is a society unlike that in which we live today, and that, to use Professor Maitland's words in a connotation other than that in which he used them, he is trying to force his concept of things as they ought to be upon the "reluctant material" of human nature and human conditions as they actually are.

It may perhaps also be remarked that in the pluralist doctrine may be seen in one sense a protest against the too static terms in which the classical theory of sovereignty, especially as stated by Austin, was put, terms which cannot be strictly accurate in a world of constant change and flux for which they do not sufficiently allow. However, in its protest, it goes much too far in the opposite direction, and the description of society that it offers is one that would itself be accurate only in a very advanced state of disorganization, in which a number of loyalties were actually and actively competing for mastery, as compete they would, —a fact which the pluralist seems to overlook.

Finally, the pluralist doctrine is timely in that it calls attention to the present bewildering development of groups within the body politic, and to the fact that these groups are persistently demanding greater recognition in the governmental system. How this recognition is to come, whether through group rather than geographical representation in legislative assemblies, or by some other means, is a problem in itself, for the proper and best way to deal with these groups is perhaps the greatest question before political science today. It may be, as most of the pluralists believe, that a federal organization of government is the solution. To such a solution, the monist could theoretically give his very hearty support, whatever his views as to its practicability might be; but in thus approving it, he would call attention to the all important fact, so consistently overlooked by the pluralist, that the truly federal state is a unitary state, of which the essence consists in the fact that in and through and above its multiple governmental organization there is one supreme loyalty and political sovereignty.

## LOCAL GOVERNMENT IN BELGIUM<sup>1</sup>

LÉON DUPRIEZ<sup>2</sup>

In Belgium there are two units of local government, the province and the commune.

Belgium is divided into nine provinces, the boundaries of which were drawn somewhat arbitrarily by the government of the French Revolution after the conquest of the country in 1795. All the provinces except one are about equal in territorial extent, but they differ considerably in respect to population, which varies from 250,000 to 1,200,000. Thus the province of Luxemburg, whose area exceeds that of any of the others by about a third, has the smallest population; it has neither industrial centers nor any important city (its largest city has a bare 10,000 inhabitants), and it is in large part covered with forests. The differences in population have increased during the last fifty years, as much from the great development of industry in certain provinces as from the growth of certain great urban centers like those of Brussels and Antwerp.

There are 2630 communes in Belgium; their boundaries were not established systematically by a single act, nor by a series of acts of the legislative authority. Almost all grew up in the course of centuries, and their boundaries have come into existence only in accordance with very ancient traditions. There are great differences among the communes, not only in respect to their territorial extent (which varies from some hundreds to some tens of thousands of acres), but also in respect to their population. Some little villages have scarcely a hundred inhabitants, whereas Antwerp had more than 300,000 in 1914. Some communes take

<sup>1</sup> Translated by Robert D. Leigh, assistant professor of politics, Reed College, Portland, Oregon.

<sup>2</sup> Professor of comparative constitutional government, University of Louvain; assistant councilor to the prime minister of Belgium.

the name of cities, others are called villages; but that does not make the least difference so far as the law is concerned, nor in respect to the administrative régime to which they are subject. Today there is no longer the shadow of a privilege, special right, or peculiar obligation which attaches to the title of city. Many communes have the title of city by force of tradition, because that title was given to them formerly when cities were invested with peculiar privileges; others have assumed that title recently, because their population has increased so much and become so congested that they no longer have the appearance of a village at all.

The organization of local government in Belgium is based on principles very different, one might even say quite opposed, to those that control local government in America.

The first principle is that of the complete and absolute uniformity of institutions and legal regulations. The provincial organization was regulated by the law of April 30, 1836; the communal organization by the law of March 30, 1836. These two laws have undergone numerous modifications since that time, but all the new acts of the legislative authority have respected this principle of uniformity. Thus all the provinces are equally subject to the same system; one probably would not find in the entire body of the Belgian laws a single provision which would apply only to one particular province, or even one that would not apply equally to all the provinces. The case is the same, in principle, with respect to the communes: the same institutions exist, the same legal regulations apply to the largest cities and to the smallest villages; there is no city that enjoys a special charter; there is not even one special system of local government for the cities and another for the rural communes.

One exception to this rule of uniformity can be pointed out, one of but little importance: the communes which have less than 5000 inhabitants are subject to the supervision of an official of the central government, whereas the largest communes are subject only to the supervision of the provincial authorities. But although no article of the constitution forbids, the Belgian

parliament has never made a law imposing upon one particular commune a special rule for the organization of its local administration. At most one can cite some recent laws which have created a fifth alderman (*échevin*) in certain large cities; the legislators of 1836, who did not foresee the considerable growth of the great cities, limited the number of aldermen to four and this number became obviously insufficient in four or five cities. The Belgian people are so imbued with this idea of uniformity in legislation—which they consider a result of the principle of equality—that no one even thinks of the possibility of particular laws or special charters. Indeed, the prejudice is so strongly rooted that statesmen and administrators up to the present time have encountered an irresistible opposition when they ask that the great cities and the industrial centers be granted a form of local government slightly different from that of 1836, which is especially suited to the rural communes.

In America local authorities are kept within the bounds of their powers and in conformity to the laws, on the one hand by the legislature, which determines in minute detail all their powers, functions and duties, and on the other hand by the courts of justice, which can annul their acts and overcome their resistance; but they are independent of the governor and of the other officers of the state. In Belgium, on the contrary, the legislature is satisfied with laying down in the law only general principles and fundamental regulations; the courts of justice have neither the power of annulment in respect to legislative acts nor the power of injunction, and they are even strictly forbidden to adjudge administrative acts. The entire control of the acts of local authorities is in the hands of a central executive power, following the principle of hierarchy, on which the entire administrative organization of European states is based. Provincial authorities administer provincial affairs, but under the supervision and control of the central government; the communal authorities administer communal affairs under the supervision and control, first of the provincial authorities and secondly of the central government. This means that certain especially important or dangerous acts of the local authority are valid only when they



have been approved by the superior authority; all other acts for which the law has not specially required such approval are valid without it; but the higher authority may annul, not modify, these latter acts, if they violate a legal regulation, if they go beyond the powers of the authority belonging to them, or if they are injurious to the general interest of the state.

The lines of division between the powers and functions of the central government and the rights and functions of the local authorities are not so clearly drawn that each can act quite separately in its own sphere without finding itself in frequent contact with the other. On the contrary, in Belgium the central government and the local authorities are, of necessity, constantly impinging on each other, in the first place because of the hierarchic control just described, in the second place because the law has also set up local authorities as subordinate agents of the central government, has called on them to coöperate in the execution of the laws and administration of general affairs, and has delegated to them powers and functions in the administrative services of the nation. Belgian provincial and communal authorities have thus a double duty: on the one hand they administer the local affairs of the province and of the commune under the supervision and under a certain legally limited control of the central government; and on the other hand they take part in administration of the general affairs of the nation under the absolute orders and control of the central government. And in practice it is sometimes very difficult to distinguish in which capacity they are acting. Naturally, when a local authority acts as an agent of the central government, the latter has power not only to give or refuse its approval to certain acts determined by the law, or to annul acts that are illegal or contrary to the general interest, but it can give orders to which the local authority owes outright obedience; it can not only annul every such act which displeases it, without even giving a reason for doing so, but it can amend it, modify it, or itself promulgate a decision contrary or altogether different.

However, it can be said that the local authorities in Belgium enjoy a very large degree of autonomy. In this respect Belgium

cannot at all be compared with France; it is unquestionably the most decentralized country of all on the European continent. The mere explanation of the legal organization of local government might give an incorrect impression. The traditions of local self-government are so strong in Belgium, public opinion there is so jealous of "communal liberties," that the central government, far from giving a broad interpretation to the powers of supervision and control which the law allows it, has not always dared even to make use of its incontestable rights, or has used them only with extreme caution. On the contrary, it has left the local authorities the greatest liberty in the exercise of their functions, has even allowed them to extend these functions to the farthest limits that the text of the laws permits, perhaps in some cases even to pass beyond those limits. Custom and tradition, even more than law, guarantee the authority and the vitality of the local authorities.

#### PROVINCIAL ORGANIZATION

In the province there are three distinct authorities, the provincial council, the permanent deputation, and the governor. The provincial council is the representative assembly of the inhabitants of the province; the number of councilors varies from 44 to 93 according to the province. They are elected for eight years, formerly by plural, manhood suffrage, each person possessing, according to certain conditions determined by law, one, two or three votes. This system was abolished by the last parliament, and was replaced by manhood suffrage, equal for all. The vote is taken by *scrutin de liste* (block vote); if a number of candidates equal to the number of councilors to be chosen has not obtained an absolute majority on the first ballot, they proceed to a second election, eight days afterwards, for the seats remaining to be filled. This system will also soon be abolished and there will be substituted for it a system of proportional representation.

The permanent deputation is composed, according to law, of six members elected for eight years by the provincial council and necessarily chosen from its own members. It is presided over by

the governor, who is also a member *ex officio* and possesses all the powers of discussion and decision. This makes it possible to say that in reality it is composed of seven members: the governor and the six elected deputies. The governor is the representative of the central government; he is chosen and may be freely recalled, without reason or pretext, by the Crown. The governors of the provinces are usually chosen from the politicians rather than from the professional administrators; they resign automatically if the central government passes from one party to another.

The provincial council holds only one regular session each year, the duration of which is limited usually to two weeks and cannot in any case exceed four weeks. Occasionally there are special sessions, but these last only a day or two at most. The provincial council, if we except some special and inconsiderable powers, has, in effect, no other task than that of provincial legislation; it has to vote the taxes and the appropriations, the annual budget, and the loans, to decide upon the construction of the provincial establishment, to regulate provincial interests. The law neither defines nor enumerates what the provincial interests are, but, as a matter of fact, they are not very numerous, nor of great importance. The provincial councils have very little to occupy their attention, aside from the building and maintenance of rural roads; the improvement of the breeds of horses and cattle; the building and organization of certain charitable institutions, for example those for the deaf mutes, the blind, the crippled, the tuberculous; the creation and administration of certain special schools, notably professional schools. This explains how the provincial councils can dispatch all the business they have to take care of, in so short a time, and shows how unimportant is the rôle they play in the political life of Belgium.

The permanent deputation, on the contrary, meets at least once a week, often several times a week in the most populous provinces. Its members receive a salary and allowances which permit them to live suitably; for it must be realized that they cannot practice any other profession, but must devote practically all their time to the exercise of their functions. These functions are, in fact, far from being limited to the administration of pro-

vincial affairs. The law has intrusted to them, first, the very important and absorbing task of supervising and controlling the activity of the communal authorities; they have to give or refuse their approval to numerous acts of the communal authorities and to inspect them with a view to preventing violations of the laws or acts injurious to general interest.

Furthermore, numerous provisions of special statutes confer upon them very diverse powers in the administration of the affairs of state; there is no type of administrative service, even the technical services, which does not have frequent recourse to the collaboration or advice of the permanent deputation. The services which the permanent deputies render to the state are so important that the central government has assumed the complete payment of their salaries; thus these provincial officers, chosen by the provincial council, whom the central government can neither dismiss nor suspend, are paid exclusively by the treasury of the state.

The law gives to the governor, alone, the duty of seeing to the execution of the decisions of the provincial council, as well as to that of the laws and royal ordinances within the province. Nevertheless the permanent deputation may be described as a true administrative council; for the governor is, for practically all his acts, obliged at least to consider their advice, or even to assure himself of their coöperation. There are many acts, considered a part of the executive function, which must be decided by the deputation and which the governor afterwards must put into execution. Thus the permanent deputation alone can dispose of the landed property of the province, and order that a warrant of payment be given; the governor has no choice but to sign the warrant in accordance with the order of the deputation. But all the powers and all the functions belong only to the deputation as a whole; each member by himself, save, of course, the governor, cannot perform the smallest act. Even for the simplest deliberation and study of data there does not exist among the deputies a division of functions analogous to that which exists among ministers in the government, nor even like that which, it will be seen, appears among the aldermen in the communal administration.

## COMMUNAL ORGANIZATION

In the commune there are also three distinct authorities: the communal council, the aldermanic college, and the burgomaster. The communal council is the body which represents all the inhabitants of the commune. It is composed of seven members only, in the little communes which have less than 1000 inhabitants; the number of communal councilors increases with the population, but never exceeds 39 in the largest cities. They are elected for six years—one-half every three years—formerly by plural male suffrage, with a maximum of four votes to an elector, but this system has just been abolished by act of parliament, and will be replaced by universal suffrage, pure and simple. The vote is taken by *scrutin de liste*, with a system of qualified proportional representation. That is to say, all the candidates who have obtained an absolute majority of votes are declared elected. If after this there remain seats to fill, they do not proceed to a second balloting as for the provincial council, but the remaining seats are apportioned among the different lists of candidates proportionately to the number of votes which they have received. Here also proportional representation without restriction will probably soon be applied.

The aldermanic college (*collège des échevins*) is composed of the burgomaster and of two to five aldermen; there are at least two aldermen in the smallest villages, there are not more than five in the largest cities. The burgomaster is appointed by the Crown but he must be chosen from the members of the communal council. So he seems much less the delegate of the central government than the representative of the inhabitants of the commune who have first elected him. In fact very often the government does not in reality have the function of choosing the burgomaster; almost always there is in the communal council a man whose nomination forces itself upon the government by reason of services which he has rendered, of his popularity in the commune, of his prestige and authority among his colleagues of the communal council. When there is no such man already designated for the function of burgomaster, the government always takes great

care to choose the councilor who will enjoy the confidence of the people and the council. It has even acquired the habit of consulting officially the communal councilors, or requesting them to present to it a candidate, and, except for very special reasons, it hastens to name him.

Aldermen are elected by the communal council from its members. Their mandate, like that of the burgomaster, has the same duration as that of the communal council; namely, for six years. On the subject of these functions of local government the Belgians have ideas and traditions very different from those of the Americans. They do not believe at all in the advantage of frequent changes; thus the burgomaster, who, like the communal council, has to be reelected, is always renominated unless he has committed grave faults in his administration, or unless the majority of the new council is opposed to his renomination. It is not uncommon to see a commune directed by the same burgomaster for twenty or thirty years.

The communal council does not have sessions regularly fixed by law. It assembles whenever the functions assigned to it require a meeting. Naturally the number of sessions varies considerably according to the importance of the commune; they are frequent in the large cities, while four or five sessions a year are sufficient in the small villages. The communal council can sit only when it is convoked by the aldermanic college; but the latter is obliged to convoke it whenever so requested by at least one-third of the communal councilors.

In the political and administrative life of Belgium the communal council enjoys a part much more active and important than the provincial council. To be sure, their principal duty is the regulation of all which is of communal interest, just as the provincial council must regulate everything of provincial interest, and the law has not taken any greater care to define and enumerate the communal interests than it has provincial interests. But as a matter of fact the communal interests far surpass the provincial interests in number and importance. The communal sphere of interests includes the building, maintenance and administration of streets, public squares, boulevards and public highways, like-

wise public gardens and parks; everything connected with public health; the maintenance and administration of primary schools; all that has to do with public benefaction, asylums, hospitals, poor relief; the cemeteries; the development and administration of the properties of the commune—forests, lands and buildings; the administration of markets, fairs and slaughter houses; the police and the maintenance of good order; and the furnishing to the inhabitants of certain commodities which involve a monopoly—drinking water, gas, electricity, tramways.

In regard to these utilities the communal councils can either grant the monopoly of operation to private companies or operate them themselves directly as a commune. These developments in administration were established in Belgium a long time before the modern socialistic tendencies began to spread. Thus, nearly everywhere the distribution of water has from the start been developed as a part of public administration; only two or three cities can be cited where it is carried on by private companies. Brussels has for a long time had communal operation of gas, and its example has been imitated by numerous communes whose administrations were not at all socialistic. Even the distribution of electricity has, in a certain number of cities, been established and developed directly by the communal administration. The tramways, on the other hand, are generally granted to private companies; Liège is the only city which up to the present has communal tramways.

The communal council, to begin with, exercises, in matters of communal interest, all the powers which appertain to parliament in matters of general interest. It passes all the regulations relative to the communal business and establishment, decides upon the creation and organization of the communal administrative services, votes the taxes and appropriations, the annual budget, and the loans and public works to be paid for out of the communal treasury. But it also has to discuss and decide upon a multitude of purely administrative matters, which are usually considered as, by their nature, coming within the province of the executive power. It must decide on all alienations, exchanges, or purchases of real estate in the name of the commune, on the

acceptance of gifts and bequests made to the commune, on the changes in the possession of communal property, on the alienation of credits, obligations and legal actions pertaining to the commune, and on the choice, suspension and dismissal of all the official agents and employees of the commune. The council can, however, delegate the nomination of employees and subordinate agents to the aldermanic college.

If we leave out of account these powers thus reserved by law to the communal council, the executive functions in the commune belong to the college of aldermen. They belong to the college entirely as a body; each of its members, even the burgomaster, has no powers by himself. To be sure, in the large cities, in order to expedite business, the direction and control of different communal services are apportioned among the burgomaster and the different aldermen. But each one individually can only direct the deliberations of officials, control the execution given by the agents to the decisions of the council and of the college, prepare and propose solutions, present reports and plans; all decisions come from the aldermanic college itself. This is the characteristic that most distinguishes the Belgian from the French system. In France all the powers and functions of administrative regulation, in the commune, belong to the mayor alone; he does not have to deliberate with the aldermen every time on all the decisions he makes; he can simply delegate functions to the adjoints who assist him, to whom he can always give orders and from whom he can always withdraw the power delegated.

Nothing has contributed more to safeguarding the autonomy of the Belgian communes against the encroachments of the central government than this collegiate organization of executive power in the commune. One man alone has not always the necessary energy and force to resist the pressure of a superior authority; not only will he resist better when he feels himself encouraged and supported by the counsels and demands of his colleagues, but often a small group composed of very ordinary men—anyone of whom left to his own strength would not have the audacity to resist—maintain an energetic and courageous opposition, because each excites and inspires the others and each feels himself thereby the stronger and more audacious.



In principle, the burgomaster has no special power. Nevertheless he is, in his own right, president of the communal council and of the college of aldermen, and this gives him considerable means of directing and of guiding their activity. In fact, beyond that, he is the man who possesses the most personal influence in both assemblies, as well as among the people of the commune. In the small and medium-sized communes, it is not uncommon to find a burgomaster who leads as he listens to the communal council, as well as the aldermanic college. The aldermen necessarily assume more authority and importance in the large communes, where the necessities of administration have brought a distribution of functions between them, and where each one of them has thus received the direction and control of an administrative service.

But there is one domain which the Belgian law has taken away entirely from the competence of the aldermanic college, where it has conferred all the powers on the burgomaster; this is the police. In theory, the burgomaster alone is charged with securing the execution within the commune of the general laws and general provincial regulations; however, this task also can be delegated to the college of aldermen, and these exceptions to the general principle are numerous. But in the matter of police there are no exceptions. The burgomaster alone is charged with the execution of all the police laws and regulations. The communal council itself can, of course, make police regulations; but it cannot control the execution given by the burgomaster to its regulations, it cannot even express its opinion on the measures taken by the burgomaster to assure their execution. In the matter of police, then, the burgomaster has full powers; he acts alone without having to consult his aldermen; he is subject only to the control of the superior authority, provincial or central. Not only does he direct and command all the officers and agents of the communal police, but he can in case of necessity requisition the assistance of the *gendarmerie* (state police) and of the army. He can even make police regulations by himself, in case of necessity, in place of the communal council.

In spite of the uniformity of legislation it is evident that the practical organization of the communal administrative services

is very different in the large cities from that in the villages. The law, which always limits itself to laying down very general rules, which gives authorization and confers powers on the communal authorities more often than it imposes on them orders and obligations, is flexible enough to lend itself to all local needs.

Such services as the furnishing of water and light, very highly developed in the large cities, do not even exist in the majority of small communes. Such others as police or health which in the large cities require hundreds of officers and agents have, at most, one special agent in the villages. The law authorizes the communal councils to vote salaries and expense allowances to the burgomaster and to the aldermen; but in hardly any of the small or medium-sized communes do the burgomaster and aldermen receive salaries, because their functions absorb so little attention that they can continue to devote to their private profession all the time necessary, and because they consider themselves paid sufficiently by the honor and prestige which their public positions give them. But in the large cities the burgomaster and the aldermen must devote all or nearly all their active time to their administrative departments, and in consequence they are paid. In Brussels the aldermen receive a salary of 8000 francs, the burgomaster has a salary of 20,000 francs. The reason for this great difference is, in the first place, that it is considered the aldermen can still find time to carry on a lucrative profession in spite of the work which they have to put in each day in communal administration, while the burgomaster must devote all his time and energy to his public duties; in the second place, there is a considerable expense of entertainment which falls upon the burgomaster of the capital of the kingdom.

#### WOMAN SUFFRAGE

Up to the present time women have been neither voters nor eligible to membership in the provincial and communal councils. Nevertheless, thirty years ago the government decided that no point of law was opposed to naming women as members of the committees charged with the administration of hospitals and

asylums, and the distribution of relief to the indigent,—called “commissions of asylums” or “bureaus of charity,” elected by the communal council and controlled by it. The choosing of women for these functions has, however, been very uncommon up to the present.

The principle that only men vote underwent a first exception in Belgium by the law of May 15, 1910, which accorded to women the same rights of suffrage as to men for the elections to the councils of *prud'hommes*. The councils of *prud'hommes* are special tribunals, charged with deciding contests between employers and workmen or mechanics. Each one of these tribunals is composed of an equal number of employers and employees, all elected, one-half by the employers and one-half by the employees of the same industry or group of industries. It is presided over by a magistrate named for life by the government as justice of the peace, for whom this presidency is only a very secondary part of his functions.

The question of revision of the suffrage has been prominent during the present reconstruction period in Belgium. Plural voting has been definitely abandoned and no more elections, central or local, will be carried on according to that system.

In April, 1919, the chambers adopted a law, which, passing outside the formal provisions of the constitution, decided that the next parliament, called to revise the constitution, should be elected by the universal suffrage of men twenty years of age and over, and that in addition the widows and mothers of the soldiers killed in the war, as well as some other women, were to be electors. The number of women enjoying the right to vote under these provisions is small; but the old dogma of the vote as the exclusive privilege of men is in this way weakened.

In the new parliament elected last November under these provisions, the chamber of representatives, on March 10, passed a bill (115 to 22, 5 absent) establishing woman suffrage in municipal elections on the same lines as manhood suffrage. On April 14 the bill passed the senate (60 to 33, 2 absent). Since an amendment to the constitution is not necessary for this change, woman suffrage is, by this bill, extended to all the communes.

The question of the extension of the parliamentary suffrage to women has caused more difficulty. The Liberal party opposed the municipal suffrage bill, and is in strong opposition to parliamentary suffrage. The Socialists are inclined to await the experience with the votes of women in communal elections before introducing woman suffrage in all elections. The present coalition cabinet has recently proposed parliamentary suffrage as a bill requiring a two-thirds majority, rather than a constitutional amendment. An interesting feature of this struggle over woman suffrage is that in such war-stricken countries as Belgium the women undoubtedly outnumber the men and might form immediately the majority of votes in elections.

In the election last November, the abolition of plural voting, combined, probably, with other causes, increased the Socialist representation in both chambers, and deprived the Catholic party of its long established majority in both chambers. The Liberal party now forms barely a one-third minority in the senate and less than that in the house of representatives. Further changes or extensions of the suffrage are, therefore, looked upon with intense interest by the three parties, to forecast their probable effect on party strength.

## SPECIAL MUNICIPAL LEGISLATION IN IOWA

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The Iowa constitution of 1857 was one of the first to prohibit the passage of special laws for cities and towns. Section 30 of Article III of the constitution enumerates six subjects upon which the legislature is forbidden to pass any special act; the fourth of which proscribes the passage of any act "For the incorporation of cities and towns." The same section also declares that "In all the cases above enumerated, and in all other cases where a general law can be made applicable, all laws shall be general, and of uniform operation throughout the state." In addition to these provisions Section 6 of Article I of the Bill of Rights requires that "All laws of a general nature shall have a uniform operation; the general assembly shall not grant to any citizen or class of citizens, privileges or immunities, which upon the same terms shall not equally belong to all citizens."

Just what prompted the convention which drafted the constitution of 1857 to declare against special legislation for cities and towns is not clear. The proceedings of the convention do not disclose any debate upon the provision when adopted. The experience of other states may have impressed the constitution makers of Iowa with the evils arising from the unlimited exercise of powers over municipalities by legislative bodies, but that these evils had manifested themselves seriously in Iowa as early as 1857 is almost beyond belief. In 1856 the total population of Iowa was only 517,875<sup>1</sup> and this was largely rural. The federal census of 1860 shows but two cities in the state with a population above 10,000 and these were both under 15,000. The largest communities in practically all of the counties did not exceed 1200,

<sup>1</sup> See Hull's *Historical and Comparative Census, 1836-1880* (Iowa), p. xlv.

and even as late as 1870 out of a total population of 1,194,020 only 281,472 were listed as urban.

The prohibition of special legislation for municipalities had been incorporated in the constitutions of Ohio and Indiana in 1851, and it is not unlikely that the Iowa provision was copied from one of these.<sup>2</sup> The opposition to the creation of private corporations by special acts of the legislature manifested itself earlier than that toward the creation of municipal corporations in that way. The Iowa constitution of 1846 declared that "Corporations shall not be created in this State by special laws, except for political or municipal purposes."<sup>3</sup> It is therefore probable that when the constitution of 1857 was adopted the prohibition of special legislation was applied both to private and municipal corporations, because no good reason could be shown why the latter should not be included as well as the former.

Since 1857 the incorporation of cities and towns has been under general law, based upon a statutory classification. Those cities and towns operating under special charters at the time of the adoption of the present constitution were not affected by the adoption of the general statute, but they were permitted to give up their special charters and organize under the general law if they so desired.<sup>4</sup> In like manner they have been permitted to give up their special charters and organize under the commission plan or the city-manager plan, as well as those operating under the general law.

From the organization of the Territory of Iowa in 1838 until the constitutional provision forbidding special charters went into effect in September, 1857, forty cities and towns had been granted special charters. Sixteen of these were granted at the legislative session of 1856-57, at the request of towns desiring special charters before it was too late.

Many of these special charters were liberal in their provisions, and the cities and towns possessing them enjoyed a considerable degree of home rule. The usual method of securing a charter was

<sup>2</sup> Cf. McBain's *The Law and the Practice of Municipal Home Rule*, pp. 68 and 74.

<sup>3</sup> *Constitution of Iowa*, 1846, Art. IX, sec. 2.

<sup>4</sup> *Code of Iowa*, 1897, sec. 631.

for the inhabitants of the community to petition the legislature in writing. Sometimes a delegation from the locality was sent to the capital for the purpose of presenting a charter, previously drawn by a committee of citizens.<sup>5</sup>

Most of the special charters contained a referendum clause, providing for a special election for the acceptance or rejection of the charter by the electors. In a few instances charters were not accepted by the voters. In one city (Muscatine) the city council was given power to accept or reject an amendment to its charter passed by the legislature.<sup>6</sup> In a few cases the electors were allowed to vote on the repeal of their own charters, a majority being necessary to a decision, but in practically all cases the legislature reserved the right to alter, amend or repeal the charters granted.

The city of Davenport received its second charter in 1842, and the act granting it expressly stated that it was to become effective only if ratified by a majority of the electors, otherwise it was to be null and void. The assembly, however, reserved the right to alter, amend or repeal. In 1847 the assembly passed an act for the repeal of this charter "*Provided*, A majority of the votes polled at the election hereinafter authorized shall be in favor of such repeal." It seems evident that the charter was not repealed, for the next year (1848) an act was passed amending the charter of 1842. In the session of 1850-51 the legislature took matters into its own hands, enacted the present charter of the city of Davenport and repealed "all acts or parts of acts coming within the provisions or purview of this act, or contrary to, or inconsistent with its provisions."

The charters granted were looked upon as matters chiefly of local concern and were usually passed without much discussion or debate, nor do the records show that a charter bill ever failed to pass the legislature, though the governor vetoed three of them on account of irregularities in passage.<sup>7</sup> It is in this spirit that

<sup>5</sup> Robeson, *Special Municipal Charters in Iowa, 1836-1858*, in *Iowa Journal of History and Politics*, Vol. 18, p. 174.

<sup>6</sup> *Laws of Iowa* (Extra Session), 1856, p. 51.

<sup>7</sup> Robeson, *Special Municipal Charters in Iowa, 1836-1858*, *op. cit.*, p. 175.

much of the municipal legislation is still passed. Dillon says: "Members of the legislature . . . have come to regard each member as representing and speaking for his own constituency, and have countenanced a tacit understanding that legislation affecting that locality should be his especial and individual care. Having no feeling of responsibility to those whose suffrages do not elect them, they are indifferent to legislation not affecting their immediate constituencies. This indifference results in a process of log rolling founded upon a tacit agreement that where political interests do not intervene, local legislation requested by the representative of the locality shall become law without objection."<sup>8</sup>

Thus the legalizing acts which make up a large part of the legislation of any session of the general assembly are usually recommended for passage as a matter of course and passed without discussion or opposition. In reviewing the acts of the last three sessions of the general assembly of Iowa the writer discovered that wherever an act appeared as special legislation, though clothed in general terms, it always affected a community located in the county which the author of the act represented. It is therefore the purpose of the writer to show that in spite of the constitutional prohibitions cited above, special legislation for municipalities in Iowa is still profuse, and that as long as it has the appearance of being general, it has been the policy of the courts to sustain it.

Following the adoption of the constitution of 1857 the legislature passed a general municipal statute, arranging municipal corporations into three distinct classes according to population as follows: All incorporated communities having a population of under two thousand inhabitants were classed as towns; all of those having a population of two thousand and less than fifteen thousand were designated as cities of the second class; and all having a population of fifteen thousand or over were rated as cities of the first class. This classification was made in the general municipal act passed in 1858 when the population was largely

<sup>8</sup> Dillon's *Municipal Corporations* (fifth edition), Vol. 1, pp. 245-246.



rural, and it has not been disturbed to the present time. Under this act communities of the two lower classes automatically pass to the next higher class as the increase in population brings them within the next higher class.

A few cities, however, have grown more rapidly than others; the capital city soon became twice as large as the next largest city in the state, and from two to five times as large as most of the cities rated as cities of the first class. Problems therefore arose in these larger cities which seemed to demand special treatment.

On March 20, 1858, the general assembly passed an amendment to the charter of the city of Davenport.<sup>9</sup> The validity of this act came before the supreme court of Iowa at the June term of the same year in the case of *Ex parte Samuel Pritz*, Judge Dillon appearing as a member of the firm of the counsel for the petitioner.<sup>10</sup> In this case, the court after raising the question of the purpose of Section 30 of Article III of the Constitution said: "The ready and obvious answer is, to prevent special or local legislation; to require that the legislature should pass general laws upon all the subjects named and in all other cases, where such general law could be made applicable. There can be no question but that it [the constitutional provision] was designed to confine the legislature to general legislation. . . . If . . . the legislature may not pass a law to *incorporate* a city, but may to amend an act of incorporation in existence before the adoption of the constitution . . . [it] would make this provision of the constitution practically amount to nothing. For if they may amend, they may to the extent of passing an entire new law, except as to one section. Or they may at one session amend half of the law, and at the next the other half, and thus the plain and positive prohibition of the fundamental law would be evaded." The act amending the charter of the city of Davenport was therefore declared null and void. In like manner the court held that the legislature had no power of re-

<sup>9</sup> *Laws of Iowa*, 1858, ch. 88, p. 152.

<sup>10</sup> *Ex parte Samuel Pritz*, 9 Iowa 30.

pealing a special charter or any of its provisions, as the constitutional prohibition would be violated as much by the repeal of a special charter as by its amendment.<sup>11</sup>

Since these decisions of the Iowa supreme court the general assembly has not, to the writer's knowledge, passed any act for the benefit of any city or town in which the city or town was specifically named, except legalizing acts, which has stood the test of the supreme court. Nor has the supreme court failed to appreciate the fact that many legislative acts can, in the very nature of the case, apply to but one community. "An act applicable to cities of a specified population," declared the court, "is not invalid as special legislation, although the limit of population is such that it is applicable to but one city, if in terms it may be applicable to other cities should they attain the specified population."<sup>12</sup> In fact the decision in the Pritz case and in that of the town of McGregor v. Baylies seems to have put an end to legislation for cities by name. Special legislation for cities is, however, common; and though always clothed in general terms, the reader can usually identify the cities benefited almost as easily as if they had been mentioned by name.

There have been several means employed of enacting legislation for the benefit of certain cities: first there is the method of enacting legislation by making it applicable to "all cities" of a certain named population or over. Thus whenever a law declares that any city having a population of seventy-five thousand or over may enjoy certain rights, the city of Des Moines is the only one benefited by the act.

Many other means of classification are employed. Thus in 1917 an act was passed providing that cities located upon any navigable river, forming a part of the boundary of the state, are authorized, where a tax has previously been voted and paid to aid any company in the construction of a highway or combination bridge across such river, to purchase such bridge and its approaches and they may issue bonds for payment, and the

<sup>11</sup> Davis v. Woolnough, 9 Iowa 104.

<sup>12</sup> Tuttle v. Polk, 92 Iowa 433.

council may fix the toll rates.<sup>13</sup> This act was clearly for the benefit of Muscatine.

In 1915 the legislature passed an optional city manager act which made provision that in cities of twenty-five thousand or over, five councilmen should be chosen, while in cities of less than twenty-five thousand but three should be elected. A special provision for a special city was, however, included as follows: "provided, however, that in any city having a population of twenty-five thousand or more, and less than seventy-five thousand, of which the territory embraced within the boundaries of such city lies in two townships, which are divided by a water course, four councilmen shall be elected, two of whom shall be residents of, and elected from that part of the city lying within each of such townships."<sup>14</sup> This was strictly a concession to local jealousy in the city of Waterloo. Even Carnegie found that a public library could not be built in Waterloo unless one was built on each side of the river; accordingly, Waterloo has two public libraries. Every public enterprise promoted on the one side of the river must be equally promoted on the other side.

The existence of a number of commission governed cities in Iowa offers another convenient basis for special legislation by classification. Thus, in 1917, an act provided that commission governed cities of 90,000 or over could not levy to exceed three mills for the maintenance of the fire department.<sup>15</sup> Des Moines is the only commission governed city in the state of Iowa having a population of 90,000 or over. Another act of the same year grants additional power to cities under the commission form of government having a population of 50,000. Only two cities can possibly come within this classification.

Four acts were passed in 1919 for the special benefit of Des Moines. Two of these apply to cities of 85,000 population and two to cities of 100,000, but in each case Des Moines is the only city that can possibly be benefited. One act declares that "all cities including cities under special charter and commis-

<sup>13</sup> *Laws of Iowa*, 1917, ch. 140.

<sup>14</sup> *Supplemental Supplement to the Code of Iowa*, 1916, ch. 14-d, p. 86.

<sup>15</sup> *Laws of Iowa*, 1917, ch. 131.

sion plan of government, having a population of eighty-five thousand or over, shall have power" etc.<sup>16</sup> The inclusion of all cities and special charter cities is mere camouflage as the largest city not under special charter or the commission plan has a population of only 30,097; while the largest special charter city has a population of 48,483. The second act applies to "all cities now or hereafter having a population of eighty-five (85,000) thousand inhabitants or over, including cities acting under the commission plan of government."<sup>17</sup> The wording of the other acts is identical with those just given except that the population limit is placed at one hundred thousand.<sup>18</sup>

In addition to the classifications made on the basis of population, other classifications are made, which, because of the conditions specified, apply to but one city and no other. Thus in 1915 the general assembly of Iowa passed an act: "That where any city has, prior to July first, eighteen hundred and eighty, received a grant of the title from the United States to a meandered lake within its corporate limits, to be held and used for public uses, recreation and park purposes, and where such city has for more than twenty years devoted the same to the public use, recreation and park purposes, its board of park commissioners is authorized in the discretion of said board to certify to the county auditor and cause to be collected an additional tax of not exceeding one-half mill," etc.<sup>19</sup> This act was introduced by the representative from Pottawatomie county resident in Council Bluffs, and by the terms of the act it can apply to no other city.

Again in 1917 the assembly passed an act that "any school corporation in which there was organized and founded prior to the year 1902 a university with not to exceed forty acres of land upon which a school building or buildings have been erected which could be used for public school purposes, and said university did prior to the year 1914 abandon said school and place its property upon the market and the same is now owned by a church organization, said school corporation may purchase said land and build-

<sup>16</sup> *Ibid.*, 1919, ch. 168, p. 191.

<sup>17</sup> *Ibid.*, 1919, ch. 155, p. 178.

<sup>18</sup> *Ibid.*, 1919, ch. 288, p. 383.

<sup>19</sup> *Supplemental Supplement to the Code of Iowa, 1916*, sec. 850, p. 72.

ings where the same are located in a city of the first class, provided the owner of said land and buildings and the school corporation can agree as to the terms of sale and purchase price thereof."<sup>20</sup> In this case the act could apply only to Mason City, and the city has since purchased the land and buildings of the defunct Memorial University.

In 1915 the assembly passed an act authorizing cities of two thousand or more inhabitants to make certain improvements on the main traveled ways into and out of such cities. Provision was made for taxing a part of the benefits to abutting property and part of the expense was to be paid by taxation. However, cities were especially forbidden to pay more than fifty per cent of the cost of such improvements by the levy of taxes or from any city funds. This act was amended in 1919 by adding the following: "Cities under the commission plan having a population of more than twenty thousand (20,000), and in which is situated no city cemetery but contains within their confines a cemetery established for more than twenty years and is conducted by a cemetery association or corporation operated not for pecuniary profit, and which cemetery contains more than forty acres and is so situated as to for a distance of more than fifteen hundred (1500) feet bar access to the city, which cemetery has a frontage of more than fifteen hundred (1500) feet upon one of the main traveled streets or highways leading into said city, and upon which street or highway a street car track is laid, and which street or highway is so situated as to make it impracticable to levy special assessments against a large portion of the abutting property so situated, are hereby authorized to avail themselves of the provisions of this chapter for the purpose of" making the improvements contemplated; and provision was made for the levying of a special tax to bear the full cost of such improvements in front of such cemetery."<sup>21</sup>

There are five commission governed cities in Iowa having a population of over twenty thousand inhabitants, but the other conditions specified apply only to Ottumwa.

<sup>20</sup> *Laws of Iowa*, 1917, ch. 400, p. 429.

<sup>21</sup> *Ibid.*, 1919, ch. 101, p. 111.

Speaking of the test which may be applied to determine whether or not legislation is general or special Dillon says: "If nothing be excluded that should be contained, the law is general. If anything be excluded that should be contained, the law is special and unconstitutional. But if there be only one locality in the State to which the law can apply by reason of certain characteristics of that locality specified in the statute, the law is not the less local and special because nothing is excluded which should be included."<sup>22</sup>

In these three acts it is evident that the circumstances in each case are very unlikely to apply to more than a single city, yet the words "any city" or "any school corporation" are supposed to relieve such legislation of its special character.

Another act of 1915 provides that "any city of this state having not less than thirty thousand or more than thirty-five thousand inhabitants according to the federal census of A. D. 1910" may grant certain rights to interurban railways and compel railroads to perform certain acts.<sup>23</sup> In this case it can never be contended that other cities may some day receive the benefits of the act, because according to the federal census of 1910 Cedar Rapids was the only city in the state having not less than thirty thousand nor more than thirty-five thousand inhabitants, and no other city can ever be so listed in that census.

Cedar Rapids was again the beneficiary of two special acts passed in 1919. The first of these provides that cities acting under the commission plan of city government, "and having a population of over thirty-five thousand (35,000) and under fifty thousand (50,000), according to the last preceding state census, and the corporate limits of which city are divided by a river, shall have power . . . , to sell or donate to the county in which such city is located such part of any island in such river belonging to such city as may be desirable or necessary for a court house and county seat site."<sup>24</sup> This act like the previous one very carefully excludes any other city from its provisions.

<sup>22</sup> Dillon's *Municipal Corporations* (fifth edition), Vol. 1, p. 253.

<sup>23</sup> *Supplemental Supplement to the Code of Iowa, 1915*, sec. 2033-g, p. 175.

<sup>24</sup> *Laws of Iowa, 1919*, ch. 111, p. 117.

There are nine commission governed cities in Iowa, but Cedar Rapids is the only one of over 35,000 and less than 50,000 according to the state census of 1915.

The other act relates to the selection of jurors in superior courts, and provides that "In all cities which now have a population of forty thousand (40,000) or more and in which superior courts are now or may hereafter be established, it shall be unnecessary in such superior court to make demand for trial by jury, and causes triable to a jury shall be tried to twelve jurors without the additional expense to any of the parties, required by section two hundred seventy (270) of the code."<sup>25</sup> In this case, again, Cedar Rapids is the only city affected by the act, as it is the only one of the seven cities having superior courts which has a population of forty thousand or over.

Students of municipal law will no doubt be surprised to know that the acts described above have not been contested in the courts. It is possible that the supreme court would hold them invalid, but the decisions so far have been to uphold such acts.

The case of the State of Iowa v. City of Des Moines<sup>26</sup> is of special interest. In 1890 the legislature passed an act providing "that the boundaries of all cities in this state, which had, by the State Census of 1885, a population of thirty thousand or more, are hereby extended two and one half miles in each direction, from the present boundaries of said cities." The act further provided "that all the territory embraced within said extended boundaries, whether the same is contained in cities, incorporated towns or otherwise, shall be and become a part of the city and subject to its jurisdiction and authority." Other provisions, exempting the annexed territory from the debt of the city annexing it, reorganizing the wards, and the like were also included. According to the census of 1885 Des Moines was the only city affected by the act. Within the territory annexed as provided in the act were seven incorporated towns and one city. The provisions of the act were at once carried out by the city of Des Moines, and by April, 1890, the changes contemplated in

<sup>25</sup> *Ibid.*, 1919, ch. 245, p. 294.

<sup>26</sup> 96 Iowa 521; *Laws of Iowa*, 1890, p. 3.

the act were completed, and the city of Des Moines exercised full municipal power over the annexed territory.

In March, 1894, the state of Iowa, on the relation of A. G. West, filed in the district court of Polk county its information, in the nature of a *quo warranto*, reciting the provisions of the Act of 1890, that it applied only to the city of Des Moines and was therefore unconstitutional and void, because repugnant to the state constitution. It declared the acts of the city, as to the added territory, were without authority of law and asked that they be so adjudged, and that the city be ousted from the exercise of such authority. The lower court dismissed the petition of the plaintiff and he appealed.

The supreme court declared that where an act "was made to apply only to cities of that number of inhabitants at a particular date in the past, when there was but one such city to which it could apply, so as to avoid the possibility, even, of any other city coming within its provisions" that it could not be made of general application. Nor did the court hesitate to say that it was clearly intended as special legislation, and "though the language of the act is general, it is special legislation," and therefore void. But at the same time the court refused to dissolve the city organization, created by the act of annexation, on the ground that there was no "public interest to be subserved by a judgment avoiding the present corporate existence," after a lapse of four years. "Such a judgment," declared the court in conclusion, "would disrupt the present peaceful and satisfactory arrangement of all the people of the city, as to its corporate existence, without a benefit, so far as we know, to any person. The law does not demand such a sacrifice for merely technical reasons. In fact, the constitutional vindication is complete with the declaration that the act is absolutely void."<sup>27</sup>

Those cities of the state which had received special charters prior to the adoption of the constitution of 1857, retained their charter privileges,<sup>28</sup> but the supreme court of Iowa held that the legislature could not amend any of these charters individually,<sup>29</sup>

<sup>27</sup> *State of Iowa v. City of Des Moines*, 96 Iowa 538.

<sup>28</sup> *Warren v. Henly*, 31 Iowa 31.

<sup>29</sup> *Town of McGregor v. Baylies*, 19 Iowa 43.



nor can the legislature legalize an act of such a city not authorized by the charter, as such an act would be equivalent to an amendment.<sup>30</sup> However, the court declared that an act which operates upon a particular condition and attaches to it certain consequences wherever that condition exists, is not in conflict with the provision of the constitution forbidding special legislation; therefore, an act applying only to cities under special charters was held not unconstitutional though it could apply to but few cities,<sup>31</sup> and though it be considered as amending their charters.<sup>32</sup> The special charter cities were authorized by an act of 1858 to amend their own charters.<sup>33</sup> This section, with the exception of a few verbal changes, is still in the code substantially the same as originally enacted. This section reads: "On the presentation of a petition signed by one-fourth of the electors, as shown by the vote at the next preceding city election, of any city or town acting under a special charter or act of incorporation, to the governing body thereof, asking that the question of the amendment of such special charter or act of incorporation be submitted to the electors of such city, such governing body shall immediately propose sections amendatory of said charter or act of incorporation, and shall submit the same, as requested, at the first ensuing city or town election. At least ten days before such election the mayor of such city or town shall issue his proclamation setting forth the nature and character of such amendment, and shall cause such proclamation to be published in a newspaper published therein. . . . On the day specified, the proposition to adopt the amendment shall be submitted to the electors thereof for adoption or rejection, in the manner provided by the general election laws."<sup>34</sup>

In spite of the initiative and referendum provision of the section, which seems to grant by right of amendment a consid-

<sup>30</sup> *Ind. School District v. Burlington*, 60 Iowa 500.

<sup>31</sup> *Haskel v. the City of Burlington*, 30 Iowa 232.

<sup>32</sup> *State v. King*, 37 Iowa 462.

<sup>33</sup> *Laws of Iowa*, 1858, ch. 157, sec. 111, p. 390. This Iowa act was referred to in the Illinois Constitutional Convention of 1869-70, in the debate on provisions to prohibit special legislation.

<sup>34</sup> *Code of Iowa*, 1897, sec. 1047, p. 400.

erable degree of home rule to the special charter cities of Iowa, all but five have abandoned their special charters to accept the provisions of the general municipal corporation act, or the commission plan of city government. Nor has the writer been able to discover any evidence that any of the still existing special charter cities have ever availed themselves of the power granted. Only one case is listed in the *Iowa Digest* as having arisen under this section. The town of Newton was granted a special charter just prior to the adoption of the present constitution of Iowa in 1857. This charter contained a provision that the town might amend its own charter as long as the amendments adopted were not inconsistent with the constitution and laws of the state. A few years later the charter was amended authorizing the town to build sidewalks and tax the costs to the abutting lots. The authority of the town to amend its charter was questioned,<sup>35</sup> but the town based its right to act on the statute of 1858 mentioned above, and not on the provision of the original charter.

It was argued before the supreme court that inasmuch as the court had already denied the legislature the right to amend the charter of any city or town,<sup>36</sup> that the legislature could not have power to confer upon cities or towns the right to amend their own charters. The court, however, refused to accept this argument and held the act of 1858 to be general legislation, and as in no way in conflict with Article III, Section 30 of the constitution forbidding local or special laws for cities or towns.

The right of the special charter cities to amend their own charters, however, has proved to be of but little value; inasmuch as any legislative act applicable to such cities is held to take precedence over the charter provisions. Under such circumstances there is no security against legislative interference, as is shown in the following case.

The city of Clinton was incorporated as a special charter city in January, 1857, with power to grade, pave, locate and vacate streets. On April 5, 1859, the city adopted a new charter which gave the city council "exclusive care, supervision and control of all public highways, bridges, streets, alleys, parks, commons,

<sup>35</sup> Von Phul v. Hammer, 29 Iowa 222.

<sup>36</sup> Ex parte Samuel Pritz, 9 Iowa 30.

levees, and landings within the city," and the council was authorized to keep them open and in repair and free from all obstructions and nuisances. Acting under this authority the city council passed an ordinance, the same year, prohibiting any "railroad company from constructing its track through or upon any street within the limits of the city, and from occupying the same for right of way or other railroad purposes." The ordinance also provided that "no railroad company shall hereafter be permitted to construct its track across any alley, street or avenue in the limits of the city, at or near the grade of such alley, street or avenue, or otherwise than over or under the same. . . ."

In 1860 the state legislature granted to the Cedar Rapids and Missouri River Railroad Company authority to build a railroad from Lyons, in Clinton county, to a point of intersection with the Chicago, Iowa and Nebraska railroad, within the corporate limits of the city of Clinton. The city sought to restrain the railroad company by injunction.<sup>37</sup>

Judge Dillon, the chief justice of the supreme court of Iowa, held that where the fee of the streets in a city is vested in the corporation in trust for the public, the legislature may authorize them to be used by a railroad company in the construction of its road without the consent of the city and without compensation. Moreover he held that the act of the legislature was not in conflict with the constitution prohibiting local and special laws. Two of the other judges, who concurred with Judge Dillon in his conclusion, based their reasoning on the general right of way act. In either case the city's right to control its own streets was held inferior to the right of the state to legislate concerning the same.

At the present time there are but five special charter cities in the state, namely:

	<i>Population 1915</i>
Davenport.....	48,483
Dubuque.....	41,795
Muscatine.....	15,785 <sup>38</sup>
Glenwood.....	3,291
Wapello.....	1,532

<sup>37</sup> *The City of Clinton v. The Cedar Rapids and Missouri River Railroad Company*, 24 Iowa 455.

<sup>38</sup> Was 16,178 in 1910.

It has become a custom in granting power to cities in Iowa usually to include the special charter cities, especially the larger ones, as it has been held in this state that general municipal legislation does not apply to the special charter cities unless they are specifically mentioned. Municipal legislation such as the following is therefore not uncommon: "Cities having a population of thirty-five hundred or over, and those acting under special charter, shall have the power to erect a city hall and to purchase the ground therefor." Such an act evidently grants to the communities of Glenwood and Wapello rights denied to all other municipalities having a population of under thirty-five hundred. In 1915 this act was amended so as to include "cities and towns, including cities under commission plan and those under special charters,"<sup>39</sup> thus extending the right to all grades of municipal organizations regardless of population.

The twenty-ninth general assembly passed an act relating to the appointment, term, compensation, removal, etc., of water-works trustees and provided that "All of the provisions of this act shall be held and construed as applying to cities of the first class and to cities acting under special charters."<sup>40</sup> Here, again, the small communities of Wapello and Glenwood by virtue of their special charters enjoy rights not granted to towns or cities of the second class.

In 1915 an act was passed providing "That cities under special charter now or hereafter having a population of twenty-five thousand or over shall have, and are hereby granted the power to place by ordinance, the charge, custody and control in the park commission, of all trees, shrubbery, flowers and grass outside of the lot or property lines and inside of the curb lines and upon the public streets, and authorize the park commission to plant, cut, prune, remove, transplant, spray, care for and maintain all trees, shrubbery, flowers and grass outside of the lot or property lines and inside the curb lines and upon the public streets, in such a manner as not to interfere with public travel,"<sup>41</sup> etc. The

<sup>39</sup> *Supplemental Supplement to Code of Iowa, 1915*, sec. 741-d, p. 62.

<sup>40</sup> *Supplement to the Code of Iowa, 1913*, sec. 747-b, p. 260.

<sup>41</sup> *Supplemental Supplement to the Code of Iowa, 1915*, sec. 997-c, p. 81.

act as originally passed could only apply to Davenport and Dubuque, the only special charter cities having a population of twenty-five thousand or over.

Here was an act that established a complete change of policy relative to the care and custody of property between the lot line and the curb. Why such an act should have applied only to special charter cities of twenty-five thousand or over is hard to tell. If the powers granted were desirable powers to extend to municipalities, Cedar Rapids, Waterloo, Council Bluffs, Clinton and Sioux City, all cities of over twenty-five thousand should also have enjoyed these powers. No doubt, the act as passed is valid, because the supreme court of Iowa has declared that an act applicable to cities of a specified population is not invalid as special legislation, although the limit of population is such that it is applicable to but one city, if in terms it may be applicable to other cities should they attain the specified population.<sup>42</sup>

This decision together with that cited above in the case of *Haskel v. Burlington* evidently gives the legislature complete freedom in passing any law for any city by simply creating a class according to its population and providing that any city now or hereafter having the specified population may enjoy the rights or provisions granted.

The assembly of 1917 amended the act referred to above by striking out the words "now or hereafter having a population of twenty-five thousand or over"—thus granting the powers conferred to all special charter cities. Now, according to the act as amended the little communities of Glenwood and Wapello by virtue of their special charters enjoy rights and powers relative to the care and custody of property between the lot lines and the curbing not enjoyed by any city or town operating under the general municipal law of the state. The absurdity as well as the injustice of this condition is at once apparent.

In 1913 the assembly passed a smoke nuisance law providing that: "The emission of dense smoke within the corporate limits of the cities of the state, including cities acting under commission

<sup>42</sup> *Tuttle v. Polk*, 92 Iowa 433.

form of government, now or hereafter having a population of thirty thousand or over and in cities acting under special charter now or hereafter having a population of sixteen thousand or over, is hereby declared to be a nuisance," and provision for the abatement of such a nuisance, by ordinance, was provided for.<sup>43</sup> When this act was passed there were eight cities in the state operating under commission government, but only three of them had a population over thirty thousand. Here we have a double classification within the same act; namely, cities including those under commission government having a population of thirty thousand or over and special charter cities having a population of sixteen thousand or over. Why should cities of less than thirty thousand and not possessed of special charters be denied the right to regulate the smoke nuisance while special charter cities above sixteen thousand were given the right? The census figures of the special charter cities give the answer. Dubuque and Davenport could just as well have been included under the classification of cities of thirty thousand or over. It was therefore intended to extend the benefits of the law to Muscatine, which had according to the census of 1910 a population of 16,178. This act is still in force, yet the census returns for 1915 show the population of Muscatine to be 15,785, thus the city can no longer be classed as a special charter city of sixteen thousand or over.

In 1884 the legislature passed an act: "That cities of the first class, that have been or may be so organized since January 1, 1881, shall have power to open, widen, extend, grade. . . ." pave, and otherwise improve their streets and alleys and assess the cost to the abutting property. The supreme court declared that though the act dealt with cities organized since a stated date it did not render it invalid as special legislation or as lacking uniform operation throughout the state.<sup>44</sup> The court further said: "The original act specifies a date as a means of classifying the cities, of the grade named, that are and are not to be affected by it. The difference in population which, as a fact, if specified in the act, would have served as a legal basis of clas-

<sup>43</sup> *Supplement to the Code of Iowa, 1913*, sec. 713-a, p. 232.

<sup>44</sup> *Owen v. Sioux City*, 91 Iowa 190.

sification, really existed, though not specified; and the query is presented, Will the act be declared unconstitutional, when facts are judicially known to exist that would be a legal basis for classification, because a date is used as a basis, and not such facts? That the legislature relied upon the date as a reason for its act, in any other sense than as it served as a means by which the law was made to meet the conditions and circumstances leading to its enactment, no one can believe. Of course the law was not made because of the date. It was made to meet conditions and wants, existing or anticipated, of certain cities, and the date was but the separating point whereby other cities were excluded from the operation of the law. That it makes another classification of cities than those based on population is not fatal to the act, because, as we have said, the classification on the basis of population is by legislative action, and there is nothing prohibiting such further classification as the legislature may think proper."

The writer, however, is inclined to believe that the date was inserted in order to apply to Sioux City. The rapid growth of Sioux City was no doubt the occasion for the act. In 1875 the population of Sioux City was 4290, in 1880 it was 7366, in 1885, 19,060. The act in question was passed in 1884. The fact that the city had more than doubled in population in five years and the fact that Sioux City was the only city which became a city of the first class between 1880 and 1885 leads one to the conclusion that the act was intended to meet a special need.

Speaking of the policy of the courts in sustaining acts similar to those here cited, Hubbard says that the courts have treated as valid a classification according to population "which treats alike all cities which now have or hereafter may have a certain population. The provision which makes such legislation apply to all cities which hereafter may have the prescribed population is supposed to relieve it from any objection. It matters not that the cities may not actually grow to have such a population; the mere possibility of such growth is sufficient."<sup>46</sup>

<sup>46</sup> Hubbard's "Special Legislation for Municipalities," in the *Harvard Law Review*, Vol. 18, p. 593.

There are hundreds of communities in the state of Iowa today that cannot, as far as one can now see, reach the twenty-five thousand mark within the next century, and even if they should, the cities of twenty-five thousand and over of today would no doubt be so much larger that the legislature in its wisdom would again create a new classification for them that would put them as far above other cities as they are today. Therefore, to justify a classification on the grounds that other cities may some day grow large enough to be included is to speak of a classification that does not exist.

The conclusion one naturally draws from a study of municipal legislation as illustrated above, is that such classifications have no other object than to defeat the constitutional provision. "A classification," says Dillon, "which is not adopted in good faith tends to deprive the people of such slight notice as the recital of the name of the locality will afford them, and leaves them at the mercy of secret or disguised attempts to change municipal laws."<sup>46</sup> He therefore declares that thirty years' experience with these constitutional interdicts against local and special legislation has convinced him that they have failed to produce the beneficial results anticipated. Thus he concludes that the right to pass local and special legislation for municipalities should be restored, under proper safeguards. This is also the conclusion of Hubbard.<sup>47</sup>

In nearly all of the cases cited above, it will be observed that the end sought is the control of some purely local affair, usually involving the right to levy and assess taxes to meet the expenses necessary to accomplish the desired end. In such cases there is little wonder that the members of the legislature have little concern, if the inhabitants of a particular community desire to tax themselves for a particular purpose, or to enjoy a power expressed in permissive language. The cities benefited might just as well be named outright, for to call such legislation general is simply a farce.

<sup>46</sup> Dillon's *Municipal Corporations* (fifth edition), Vol. 1, p. 253.

<sup>47</sup> Hubbard's "Special Legislation for Municipalities" in the *Harvard Law Review*, Vol. 18, p. 602.



That legislation of the character herein described is in effect special legislation is frankly admitted by the legislators themselves. One of the members of the general assembly reviewing the acts of the Iowa legislature for *American Municipalities* in 1915 says, concerning the municipal legislation enacted: "Many of these affected but one locality, as the Griffin bill to prevent floods in cities, for Sioux City's special benefit; the use of the bridge fund in Cedar Falls, by McFarlane; the special saloon bill by Kimberly and Kane, affecting only Dubuque and Davenport; giving cities power to condemn land for sewer inlets, by Jamieson, for Burlington's benefit, etc."

To permit special legislation in such cases may be advisable, but to grant a reasonable degree of home rule would not only accomplish the same results, but would relieve the general assembly of a large number of bills that regularly take up its time.

Statutory home rule was urged before the general assembly of Iowa a few years ago, but failed to pass.<sup>48</sup> The charge, however, that the farmers defeated the measure is not shown by the record. In the senate, which is composed of fifty members, twenty-five members voted for the measure, ten against it, and fifteen were recorded as absent or not voting. Of those who voted against the measure there were five lawyers, three bankers, one farmer and one publisher. Nor does it seem to have been a party measure, inasmuch as nineteen Republicans and six Democrats voted for the act, six Republicans and four Democrats voted against it, while eleven Republicans and four Democrats were absent or not voting.<sup>49</sup>

<sup>48</sup> The bill proposed to grant cities authority to exercise all powers of local self-government subject to such specific restrictions as to particular powers as now are or may hereafter be established by law. It also provided that no enumeration of powers in any law should operate to restrict this general grant of power, or to exclude other powers comprehended within the grant.

Two amendments were adopted on the floor of the senate: First, no city was to be allowed to incur any debt or levy any taxes unless specifically authorized by law, and second, a construction clause providing that nothing in the law should be construed as repealing any of the police powers of the state, and that all laws enacted by the state should be binding on all municipalities and municipal officers.

After the adoption of these amendments the bill was defeated as noted above.

<sup>49</sup> *Senate Journal* (Iowa), 1915, p. 1501.

One of the chief arguments made against the measure at the time it was under consideration was that, since it was only a statutory grant of home rule, it would in no way stop legislative interference in municipal affairs. The argument was no doubt valid, for the special charter cities soon discovered that the statutory right to amend their charters was of but little value if the general assembly might legislate for such cities as a class. It has already been shown that whenever legislation applying to the special charter cities is in conflict with the charter provisions, the legislation takes precedence over the charters and therefore works a repeal of the charter as far as it is in conflict with such legislation. The special charter cities have therefore sought special acts at the hands of the legislature as much as those cities not enjoying special charters.

There is, however, a growing belief in Iowa that the municipalities of the state ought to be given greater freedom in the control of those things which concern them alone. The fear of abuse of power can readily be overcome by fixing a maximum limit of taxation; but having determined that, there is no good reason why the legislature should say how much the cities may spend upon each of their numerous functions. Local needs should determine the purposes for which expenditures are made. These are not likely to be the same in any two communities. Moreover, whenever a local need arises, the legislature shows little disposition to deny the power requested to meet it. But confronted with the constitutional prohibition against special legislation it enacts in general terms a measure that can seldom apply to more than one community. The people of any community are certainly better judges of their purely local affairs than the state legislature can possibly be no matter what its wisdom or good intentions.

In his presidential address, before the Iowa State Bar Association in 1915, Hon. F. F. Dawley took issue with the theory of the legal status of municipal corporations as expressed by Dillon—that "municipal corporations owe their origin to, and derive their powers and rights wholly from the legislature." Moreover, he asserted that the responsibility for the general accept-

ance of this view largely rests with the courts. "which have generally failed to observe the historical fact that communities of people known as towns and villages originated before state governments and independently of them and possessed and exercised rights and powers not derived from the state but inherent in the very nature of our system of government." Citing numerous instances in which the courts have held that cities do enjoy a right of local self-government which cannot be taken from them by legislative act, he declared that "the long line of cases holding that cities and towns have no powers whatever, even in local matters, except such as are expressly conferred by act of the legislature, ought to be overruled without waiting for an act of the legislature to set them aside."

Whenever the fundamental right of local self-government is restored to the cities of Iowa, whether it be by constitutional amendment, court decisions or legislative enactment, then, and not until then, may we expect to see a material decrease in the number of acts, such as have been the subject of this paper, biennially passed for particular communities.

## LEGISLATIVE NOTES AND REVIEWS

EDITED BY CHARLES KETTLEBOROUGH

*Director, Indiana Legislative Reference Bureau*

**Statutory Revision and Legislative Aids.** During the past year, seven states provided for the revision of their general laws, two partial revisions were authorized and the completed revisions of four states adopted; considerable activity was also displayed in the codification of single acts and the publication of those laws most frequently in demand. Of the legislative aids provided, the most noteworthy are the creation of commissions on uniform state laws, the establishment of drafting bureaus, the regulation of lobbying and the installing of a mechanical system for the registration of the votes of members of the legislature.

*Compilation and Revision of General Statutes.* Seven states (Colorado, Iowa, Missouri, Wyoming, Arkansas, Montana and Oregon) provided for the revision, consolidation, codification and annotation of all of the laws of the state of a general nature. Colorado created a commission to undertake this work, consisting of two competent attorneys, appointed by the governor in consultation with the judges of the supreme court. One justice of the supreme court and two district judges, to be appointed by the governor, are to act in an advisory capacity. The work of the commission is to be submitted to the legislature of 1921 and together with the session laws of 1921 will constitute the official code.<sup>1</sup> The Iowa code commission consists of three persons, one of whom is the supreme court reporter and two of whom are to be named by the governor from a list of 5 selected by the chief justice of the supreme court. All annotations are to be prepared by the supreme court reporter.<sup>2</sup> Missouri created a joint legislative committee, consisting of seven senators, seven representatives, the president pro tem of the senate and the speaker of the house, to collate, compile, codify and revise the general statutes for publication in not to exceed 3 volumes. The revision was designed to become effective on November 1, 1919, and 20,000 sets were ordered printed.<sup>3</sup>

<sup>1</sup> *Colorado Session Laws*, 1919, p. 160.

<sup>2</sup> *Iowa Session Laws*, 1919, p. 64.

<sup>3</sup> *Missouri Session Laws*, 1919, p. 485.

In Wyoming, the governor is authorized to appoint 2 commissioners to prepare for publication in one volume all laws of a permanent nature in effect on March 10, 1919, to be known as the compiled statutes. The compilation is to take effect before the legislature of 1921 upon the issuance of a proclamation by the secretary of state announcing its completion and adoption.<sup>4</sup> The governor and supreme court of Arkansas are authorized to appoint a suitable person to revise the laws of a general character in force at the close of the session of 1919. When the revision is complete it is to be submitted to an examiner and if found correct is to be published in one volume of which 12,000 copies are to be printed.<sup>5</sup> In Montana, the supreme court is directed to appoint a suitable person to revise the code of 1907 and the acts since passed. The revision is to be completed by January 1, 1921, and is to be published in 5 volumes.<sup>6</sup> The supreme court of Oregon is authorized to appoint a code commissioner to compile and annotate the general statutes of which 1,000 sets are to be published in two or three volumes.<sup>7</sup> South Dakota appropriated \$4,000 to complete the revised code of 1919 and provided for the printing and distribution of 1,250 copies.<sup>8</sup>

*Partial Revisions.* The legislature of Nevada authorized the supreme court to contract for the compilation and annotation of all statutes embodied in the acts of 1913, 1915, 1917 and 1919.<sup>9</sup> In Nebraska, the attorney-general was authorized to appoint a compiler to codify and publish in a supplemental volume all laws enacted since 1913.<sup>10</sup>

*Adoption of Revised Statutes.* Connecticut adopted and confirmed the general statutes of the state as revised, arranged and published in 1918 and authorized the comptroller to appoint a selling agent in every city and town of the state having a population of over 50,000, the retail price being fixed at \$7.50.<sup>11</sup> Idaho enacted the compiled laws as completed prior to the last session, and authorized the clerk of the supreme court to prepare a general index to be included in each volume and to incorporate with the compiled laws all general statutes, includ-

<sup>4</sup> Wyoming Session Laws, 1919, p. 47.

<sup>5</sup> Arkansas Session Laws, 1919, p. 221.

<sup>6</sup> Montana Session Laws, 1919, p. 408.

<sup>7</sup> Oregon Session Laws, 1919, p. 439.

<sup>8</sup> South Dakota Session Laws, 1919, pp. 48 and 352.

<sup>9</sup> Nevada Session Laws, 1919, p. 400.

<sup>10</sup> Nebraska Session Laws, 1919, p. 870.

<sup>11</sup> Connecticut Session Laws, 1919, ch. 38 and 137.

ing those of the 1919 session; the secretary of state is authorized to publish 3,000 sets of three volumes each and sell them at \$4.00 per volume.<sup>12</sup> Alabama created a joint legislative committee to inquire into and examine the compilation of general statutes as submitted by Samuel Will John. Florida by an act of June 9, 1919, formally adopted the Revised General Statutes previously prepared by authority of Acts 1915, ch. 6930 and Acts 1917, ch. 7347.<sup>13</sup>

*Separate Law Codifications.* The following laws were codified by the various legislatures during the last session: Illinois codified the general corporations acts of the state; Delaware, West Virginia and Georgia the school laws; Maine, Illinois and Ohio the fish and game laws; New Jersey the laws concerning counties and relating to charities and corrections; Indiana and New Jersey the general tax laws; Georgia and Ohio the bank laws; and Pennsylvania the bank department and library laws.<sup>14</sup>

*Separate Law Codifications Authorized.* Oklahoma created a children's code commission of 3 persons to codify and revise the laws relating to children; the attorney-general of Michigan is authorized to codify and consolidate the laws relating to corporations. Nevada created a commission consisting of the governor, state controller, treasurer and auditor to revise and codify the revenue laws of the state and report to the next session of the legislature.<sup>15</sup> South Carolina provided for the appointment of a committee to revise the laws relating to the state insane hospitals;<sup>16</sup> Maine created a legislative committee to revise, collate, arrange and consolidate the inheritance tax laws of the state.<sup>17</sup> Minnesota provided for the appointment of a commission of two senators, two representatives, the dairy and food commissioner, a member of the attorney-general's staff and one ap-

<sup>12</sup> Idaho *Session Laws*, 1919, pp. 4 and 197.

<sup>13</sup> Alabama *Session Laws*, 1919, pp. 32 and 169; Florida *Session Laws*, 1919, p. 109.

<sup>14</sup> Illinois *Session Laws*, 1919, p. 312; Delaware *Session Laws*, 1919, p. 352; West Virginia *Session Laws*, 1919, p. 39; Georgia *Session Laws*, 1919, p. 288; Maine *Session Laws*, 1919, p. 427; Illinois *Session Laws*, 1919, p. 25; Ohio *Session Laws*, 1919, p. 577; New Jersey *Session Laws*, 1918, p. 567; New Jersey *Session Laws*, 1919, p. 343; Indiana *Session Laws*, 1919, p. 198; New Jersey *Session Laws*, 1919, pp. 847 and 883; Georgia *Session Laws*, 1919, p. 135; Ohio *Session Laws*, 1919, p. 80; Pennsylvania *Session Laws*, 1919, pp. 209 and 242.

<sup>15</sup> Oklahoma *Session Laws*, 1919, p. 92; Michigan *Session Laws*, 1919, p. 44; Nevada *Session Laws*, 1919, p. 287.

<sup>16</sup> South Carolina *Session Laws*, 1919, p. 661.

<sup>17</sup> Maine *Session Laws*, 1919, p. 644.

pointive member to revise, codify and annotate the dairy and food products laws and to report on or before December 1, 1920, and a second commission consisting of the attorney-general, the public examiner, the state printer and one appointive member to codify and revise the laws relating to legal notices and report to the legislature of 1921.<sup>18</sup> Pennsylvania continued the commission created in 1917, consisting of two bankers and two lawyers to codify and revise the laws relating to banks and trust companies;<sup>19</sup> and Oregon created a child welfare revision committee of three members to codify, classify and index all laws pertaining to children.<sup>20</sup>

*Legal Publications Authorized.* The legislative counsel of California is authorized to prepare for publication 2,000 copies of an index of the constitution and laws of the state. Pennsylvania authorized the publication of 100,000 copies of the fish, game and forestry laws. Michigan provided for the publication of an index of all local and special acts of the state. Connecticut authorized the publication of a pamphlet containing the federal naturalization laws and the state election laws; and the state librarian of Maine is authorized to prepare an index of the special and local laws from 1820 to date.<sup>21</sup>

*Commissions on Uniform Legislation.* South Dakota and Idaho created commissions on uniform state laws which are authorized to attend the meetings of the National Conference of Commissioners on Uniform State Laws and report to the legislature the results of their work.<sup>22</sup>

*Drafting Bureaus.* Oregon created a legislative service and reference bureau consisting of 5 members of the faculty of the state university, including the heads of the departments of law, economics, history and commerce. Members of the faculty and students may be employed in doing research work. The duties of the bureau are to investigate public questions and draft bills. Wyoming provided that the senate and house jointly are authorized to employ two attorneys for the term of the legislature to be known as the consultation committee and whose duty it is to prepare bills, resolutions and amendments.<sup>23</sup>

<sup>18</sup> Minnesota *Session Laws*, 1919, pp. 473, 768.

<sup>19</sup> Pennsylvania *Session Laws*, 1919, p. 1057.

<sup>20</sup> Oregon *Session Laws*, 1919, p. 538.

<sup>21</sup> California *Session Laws*, 1919, p. 926; Pennsylvania *Session Laws*, 1919, p. 902; Michigan *Session Laws*, 1919, p. 500; Connecticut *Session Laws*, 1919, ch. 6; Maine *Session Laws*, 1919, p. 577.

<sup>22</sup> South Dakota *Session Laws*, 1919, p. 431; Idaho *Session Laws*, 1919, p. 530.

<sup>23</sup> Oregon *Session Laws*, 1919, p. 232; Wyoming *Session Laws*, 1919, p. 3.

*Lobbying.* Maine enacted a law of the usual type providing for the registration of legislative counsel or agents who accept employment to promote or oppose the passage of legislation.<sup>24</sup>

*Mechanical Vote Registration.* Iowa authorized the executive council to procure and install an electrical and mechanical system for the instantaneous registration of the votes of the members of the general assembly on all questions requiring a roll call. The vendor is required to keep the machine in repair, due to any mechanical defects, free of charge for a period of five years, and no money is to be paid on the contract price until the executive council and 3 members of the house have approved it. The sum of \$18,000 was appropriated to defray the cost of purchase and installation.<sup>25</sup>

*Miscellaneous.* Iowa provided for the printing of 6000 copies of the laws of each session which will be sold at fifty cents to residents and \$1.00 to nonresidents.<sup>26</sup> Connecticut provided that all public acts, unless otherwise specified, will hereafter take effect on July 1 following the session.<sup>27</sup> By a concurrent resolution, Idaho provided that in all bills amending existing laws the amendatory matter, in both the engrossed and enrolled copies, shall be underlined and that asterisks shall be inserted to indicate the parts stricken out and that the session laws shall be similarly identified.<sup>28</sup>

C. K.

**Statistical Agencies.** The collection and dissemination of statistical information of various kinds by state boards or commissions was the subject of legislation in seventeen states in 1919. In twelve of these<sup>1</sup> the chief interest lay in provision for the gathering and compiling of agricultural statistics; in eight states coöperation with the United

<sup>24</sup> Maine *Session Laws*, 1919, p. 91.

<sup>25</sup> Iowa *Session Laws*, 1919, p. 424.

<sup>26</sup> Iowa *Session Laws*, 1919, p. 35.

<sup>27</sup> Connecticut *Session Laws*, 1919, ch. 225.

<sup>28</sup> Idaho *Session Laws*, 1919, p. 594.

<sup>1</sup> Arkansas *Session Laws*, 1919, Act 209, p. 166; Colorado *Session Laws*, 1919, p. 632; Idaho *Session Laws*, 1919, ch. 37, p. 136; Illinois *Session Laws*, 1919, p. 14; Maine *Session Laws*, 1919, ch. 99, p. 91; ch. 151, p. 150; Michigan *Session Laws*, 1919, no. 47, p. 76; Missouri *Session Laws*, 1919, p. 110; Oklahoma *Session Laws*, 1919, ch. 82, p. 131; Oregon *Session Laws*, 1919, ch. 124, p. 180; South Dakota *Session Laws*, 1918, Special Session, ch. 28, p. 31; 1919, ch. 102, p. 83; Tennessee *Session Laws*, 1919, ch. 174, p. 642; West Virginia *Session Laws*, 1919, Special Session, ch. 11, p. 29.



States department of agriculture and the establishing of a coöperative crop reporting service for the state, formed an important motive back of the legislation. Arkansas and Missouri definitely mention the establishment of a coöperative crop reporting service; while Colorado, Maine, Michigan, Tennessee and West Virginia merely provide for coöperation in general terms. Under the present policy of the United States bureau of crop estimates, this virtually assures the creation of this new coöperative service in each of these states.

In Illinois, Maine, Michigan, Missouri, Oklahoma, Oregon, South Dakota, Tennessee and West Virginia the statistics to be gathered are purely agricultural. In Michigan the new statute merely adds authority for the secretary of state to enter into coöperative arrangements with the United States department of agriculture, by amending a statute of 1881 under which the state requires monthly reports on live stock and growing crops.<sup>2</sup> The other eight states require the local assessors, at the time of making the annual assessment of property, to collect and tabulate such agricultural information as may be required by the state board, on blanks prescribed and furnished by the latter. In Illinois the assessor must return such lists to the county clerk within ten days after the completion of the assessment, the clerk forwarding them to the state department of agriculture. In Maine the local assessors in each city, town and plantation collect the required statistics; in Missouri the county and township assessors. In Oklahoma, Oregon, Idaho, Colorado and Tennessee it is the duty of the county assessor. South Dakota provides that each township, town or city review board, as its first duty upon qualifying as such board, shall examine the statistical returns of the assessor and require the assessor to correct or complete such lists. No assessor can receive remuneration for his services until he has submitted complete and correct lists of the statistics required. Five states provide additional compensation for the local assessors for collecting this information. In Oklahoma and Tennessee this compensation is five cents per farm reported; in Missouri, four cents. West Virginia authorizes the county court to allow reasonable compensation not exceeding ten per cent of the assessor's salary. In Maine the rate is the same as for the assessor's services in the assessment of property. Idaho merely states that the cost of this work is a part of the expense of the assessor's office.

*State Administrative Authority.* Six states<sup>3</sup> make it the duty of the state board or department of agriculture to collect and compile agri-

<sup>2</sup> Michigan Laws, 1881, act 33, amended by act 47, p. 76, Laws, 1919.

<sup>3</sup> Illinois, Maine, Missouri, Oklahoma, Tennessee and West Virginia.

cultural statistics. Oregon and South Dakota add that function to the duties of the state tax commission.

Arkansas created a bureau of crop estimates and immigration, under the supervision of the commissioner of mines, manufacturing and agriculture, who appoints two assistants, one a graduate of an agricultural college, the other with statistical experience, who have charge of the collection and tabulation of information concerning agricultural, mineral and timber resources of the state.

The commissioner of immigration, under the state board of immigration, is also charged with the collection of agricultural statistics in Colorado. Idaho also intrusts this function to the department of immigration, labor and statistics.

*Special Statistics.* Only one state, in 1919, has provided for the centralization of all state statistical work in a single office. The Idaho law provides not only that the department of immigration, labor and statistics shall have charge of the collection and publication of statistics other than vital statistics, but it also further specifies that any department of the state government requiring the collection of statistics must make a request therefor to the department of immigration, labor and statistics.

The Nebraska department of agriculture is granted authority to gather, tabulate and publish statistics showing the condition of tenants and renters in rural communities and incorporated villages and cities of the state.<sup>4</sup>

Threshermen must register with the county auditor in South Dakota, and must keep records and submit returns showing the amount of grain and seed of each kind threshed during the season and when and for whom it was threshed. This information is filed with the state director of markets, on blanks furnished by him.<sup>5</sup>

In Colorado, Arkansas and Idaho the statistics collected are not confined to agriculture, the general purpose being the compilation and dissemination of information concerning all the resources of the state that would be of interest or value to possible settlers or immigrants.

Arkansas and Montana also stress the collection of statistics concerning mineral resources. In the Montana School of Mines there was established the Montana state bureau of mines and metallurgy which is charged, among other duties, with the collection and publica-

<sup>4</sup> Nebraska *Session Laws*, 1919, ch. 262, p. 1060.

<sup>5</sup> South Dakota *Session Laws*, 1919, ch. 102, p. 83.

tion of statistics relative to Montana geology, mining, milling and metallurgy.<sup>6</sup>

Pennsylvania provides for a bureau of municipalities, under the department of internal affairs, which is required to gather, classify, index and make available statistical information and advice that may be helpful in improving the methods of administration and municipal development in the municipalities of the state. The bureau's duties are by no means purely statistical. It maintains a publicity service to assist in installing modern systems of accounting, employs an engineer to promote comprehensive plans for the probable future requirements of municipalities in respect to systems of traffic thoroughfares and other highways, transportation, sites for public buildings, parks and playgrounds and all public improvements to the advantage of municipalities as places of business or residence. This act repeals a former statute creating a division of municipal statistics and information in the department of labor and industry.<sup>7</sup>

New York in 1918 amended its law in relation to the organization of the bureau of statistics and information, under the labor commission. All cases of industrial poisonings, contracted as the result of the nature of the patient's employment, must be reported to the commission by the medical practitioner. In general the duty of the bureau is to collect such statistics from the records of the department or from special reports in order to supply the commission with full information relating to the operation and effect of the labor laws which it administers.<sup>8</sup>

Maine requires special statistics concerning the amount of logs and other timber cut, by board feet or cords, to be returned to the board of state assessors on blanks presented by it. The report is made by all owners or agents of lands classified as wild lands. In case such return is not made, the state board may secure the information in such manner as it deems advisable, adding the expense to the state tax next assessed against such lands.<sup>9</sup>

*Fish Statistics.* A comprehensive plan for the gathering of statistical information concerning commercial fisheries, the investigation of evidences of overfishing, and the conservation or development of

<sup>6</sup> Montana *Session Laws*, 1919, ch. 161, p. 311.

<sup>7</sup> Pennsylvania *Public Laws*, 1919, ch. 34, p. 45. (*Public Laws*, 1915, p. 689; 1917, p. 1111.)

<sup>8</sup> New York *Session Laws*, 1918, ch. 456, p. 1338.

<sup>9</sup> Maine *Session Laws*, 1919, ch. 77, p. 73.

fisheries was initiated in California under the fish and game commission.<sup>10</sup>

Every person, firm or corporation engaged in the business of canning, curing or preserving fish or manufacturing fish meal, fish oil or fish fertilizer, or dealing in fish, mollusks or crustacea is required to make a return, in the nature of a receipt, showing the name of the fisherman and boat or the dealer from whom the fish were received, the date received, the weight by species and the price received by the fisherman. The record must show for what use the fish are intended, whether to be sold fresh or to be canned, cured, etc., and also whether the fish were taken in foreign waters or in the high seas off another state or foreign country. A triplicate copy is furnished to the fish and game commission, the dealer and the fisherman retaining the other copies. A separate record is required when the dealer catches his own fish. Masters of trawls and operators of the fishing gear must keep a record in a book furnished by the fish and game commission, showing the time and place of each haul, the approximate catch by species; the time of the voyage and the total catch of each species as weighed out when landed.

Fish canneries render an annual statement to the commission showing the location of the plant, kind of business, capital invested, number of persons employed, number of months operating and amount and kind of fish products canned, preserved or manufactured. Owners of boats engaged in fishing for profit must file a return showing the dimensions of the boat, motive power, number of crew, equipment and description of fishing gear.

The fish and game commission is empowered to board any boat or enter any such place of business and to examine all books of records containing an account of fish caught, bought or sold. The commission is further empowered to regulate and control the handling of fish or fishery products to prevent deterioration or waste; to establish grades to which the fish or products offered for delivery to canners or fresh fish markets must conform.<sup>11</sup>

*Statistical Publications.* Most of the states give authority for publication and dissemination of the statistical information gathered. Two states, however, specify that such information shall be issued as a handbook or blue book.

<sup>10</sup> California *Session Laws*, 1919, ch. 550, p. 1201.

<sup>11</sup> California *Session Laws*, 1919, ch. 551, p. 1203.

The Arkansas commissioner of mines, manufacturing and agriculture is authorized to prepare a handbook of information concerning crops, soil, timber and industries of the state, covering the resources of each county and to publish this annually with such illustrations and maps as are appropriate.

The Colorado state board of immigration is authorized to publish annually a Colorado Blue Book containing information compiled concerning population, agriculture, mining, manufacturing or other industries of the state.

The work of the bureau of statistics in Indiana which was established in 1879 and discontinued in 1917, was given in 1919 to the legislative reference bureau, which is authorized to collect financial statistics of counties, cities and towns and to enter into a coöperative arrangement with the United States department of agriculture to collect and disseminate crop and live stock statistics.<sup>12</sup>

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**Marketing Bureaus.** Conspicuous among the 1919 legislative acts against profiteering and the high cost of living is the establishment of bureaus of marketing in Pennsylvania, Missouri and Nebraska. These bureaus are intended to benefit both the producer and the consumer in the marketing and the distribution of farm products.

The Nebraska act creates no new agency. It is little more than an anti-monopoly law, declaring that the already existing organizations which deal in farm products are public markets, and regulates the membership and the rights of members in those markets. Such markets include every organization which maintains or operates "a regular place of business or trading room for members only, in which the members sell or exchange grain or other farm products for themselves or others."<sup>1</sup>

Every market is required to be open to membership with equal rights and privileges with all other members, to any person, firm, company or corporation desiring to trade in such commodity on such market who shall make application for membership and whose methods of business operation or plan of organization shall not conflict with any regulation of such market. Unreasonable exclusions to membership

<sup>12</sup> Indiana *Session Laws*, 1919, p. 82.

<sup>1</sup> Nebraska, *Session Laws*, 1919, p. 989.

and refusal to deal with any member on an equal basis with other members constitute "a monopoly in restraint of trade" and any trade in such organization is made unlawful.

The Pennsylvania and Missouri acts are more constructive and contain similar provisions. The Missouri bureau is administered by the state board of agriculture. In Pennsylvania, the bureau is an integral part of the department of agriculture and is thereby under the direction of the secretary of agriculture, but a subordinate director may be appointed.

The Pennsylvania act is the most specific and detailed of the three. It repeals the previous, but similar, acts of May 1, 1915, and July 17, 1917, and gives the bureau of markets power:

To "investigate the subject of marketing farm products, including the costs of marketing, to publish the results of such investigation, and to furnish advice and assistance to the public with reference to the marketing of farm products."<sup>2</sup>

"To gather and diffuse timely information concerning the supply, demand, prevailing prices and commercial movement of farm products, including quantities in common and cold storage."

To secure "the coöperation and assistance of all other agencies."

"To assist and advise in the organization and conduct of public markets, of coöperative and other associations for improving marketing conditions and activities among producers, distributors, and consumers."

"To investigate delays, embargoes, conditions, practices, charges, and in the transportation and storage of all farm products, which appear to be detrimental to a free, economical, and efficient marketing of such products."

"To take such lawful steps as may be deemed advisable to prevent waste of perishable products."

To "establish and promulgate standards for the grade and other classification of farm products."

To "establish and promulgate standards for receptacles for farm products by which their quality, value, or quantity may be determined."

To "enforce the standards of grades, weights and measures as promulgated by the United States Department of Agriculture."

<sup>2</sup> Pennsylvania, *Session Laws*, 1919, p. 809.

To "make regulations governing the marks, brands, and labels, which may be required upon receptacles for farm products for the purpose of showing the name and address of the producer or packer or distributor, the quantity, nature, and quality of the product."

The director of the bureau of markets may designate employees of the bureau to make investigations and classifications of farm products upon request, and he may fix fees for such services. He may also license other competent persons as agents to perform the same services, in which case the agents collect such fees as the director may direct. These fees are to be covered into the state treasury.

The Pennsylvania law makes it the duty of any person within the state who is engaged in the marketing of farm products "to prepare and submit to the bureau, upon request . . . reports of the quantity and conditions of any farm product held by or for storage" in the state. It also requires any person to "furnish the bureau upon request" special reports "concerning the demands for and the supply, consumption, costs, value, price, conditions, and period of the holding of any farm product which is or has been held by or for such person, in storage or otherwise." In order to further carry out these provisions the director and his employees are authorized to enter storehouses, stock yards, etc., or any other place where farm products are kept. It is a misdemeanor for any person to refuse to comply with the provisions of the act and such misdemeanor is punishable by fine or imprisonment or both.

Under the Missouri act, the bureau of markets is authorized:<sup>3</sup>

To "publish bulletins, including the names of producers, distributors, and consumers."

To "promote effectual and economical methods of marketing."

To "coöperate in the distribution of farm labor in so far as found acceptable to the state and federal labor departments."

To "coöperate with the United States department of agriculture, the United States bureau of markets, college of agriculture, and state experiment station, and especially with other states having laws providing for a marketing bureau."

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<sup>3</sup> Missouri, *Session Laws*, 1919, p. 109.

**Uniform Legislation**—Legislative activity in 1919 is an evident manifestation of the fact that, while states are, in general, somewhat slow in adopting the model uniform laws proposed by the national conference on uniform state legislation, there is a very definite trend towards the more widespread acceptance of some of the uniform laws. The advantages which result from the elimination of conflict of law and uncertainty of law in various jurisdictions by the actual unification of state statutory provisions even to the extent of the use of identical language in all laws, has been more fully realized, apparently, during the past four years, for the legislation of 1916–19 has included 100 (or nearly 40 per cent) of the 257 uniform laws which have been passed by the various states and territories since 1892.

Property laws, the negotiable and quasi-negotiable instrument laws particularly, have found the most ready acceptance, while laws of a more social and less economic nature—the various uniform marriage and divorce acts, for example—have not met with as great favor.

Of the thirteen different uniform laws which were enacted in twenty-three states in 1919, eleven were of a commercial nature. The exceptions were the law for the extradition of persons of unsound mind and the patriotic uniform flag law, concerning the mutilation or defacement of the national or state flag or other emblems authorized by law, and their use in advertising.

The total number of uniform laws which were adopted in the sessions of 1918–19 was 47, comparing favorably with the 53 laws enacted in 1916–17.

The negotiable instruments act, which is one of the best known of the uniform laws and one which has found ready acceptance, was adopted by Texas in 1919.<sup>1</sup> This act is now a law in forty-seven states, Georgia alone having failed to adopt it. In consequence, this law, originally proposed in 1896, has become in fact a uniform state law.

Similarly the warehouse receipts act has been so generally adopted that the law on that subject may well be considered uniform for all states. Idaho, Montana, Oklahoma and Texas<sup>2</sup> adopted the law in 1919. The Idaho law is styled the “bonded warehouse law,” but the provisions of the uniform warehouse receipts law are definitely accepted by the act. A Georgia law of 1918<sup>3</sup> provided for negotiable warehouse

<sup>1</sup> *Laws*, regular session, 1919, ch. 123.

<sup>2</sup> *Session Laws*, 1919, Idaho, p. 484; Montana, ch. 209; Oklahoma, p. 383; Texas, (regular session), ch. 126.

<sup>3</sup> Georgia, *Session Laws*, 1918, p. 246.



receipts, but dealt with cotton warehouses only. There now remain but seven other states which have not accepted the provisions of the uniform law. These are Arizona, Indiana, Kentucky, Mississippi, New Hampshire, Oklahoma and South Carolina.

The uniform sales act, first approved in 1906, found favor in four states, Idaho, Iowa, Oregon, and Tennessee,<sup>4</sup> and twenty-two states now have this law.

The uniform bills of lading act was adopted by two more states, California<sup>5</sup> and North Carolina. The California law is a substitute for the law of 1915 which had embodied the essential provisions of the model law. Twenty-one states have now unified their statutory provisions on this subject.

None of the other uniform laws which have been proposed have met with such widespread acceptance. The fraudulent conveyance act, however, which was first proposed in 1918, was immediately accepted in eight states,—Arizona, Delaware, Michigan, New Hampshire, New Jersey, South Dakota, Tennessee and Wisconsin.<sup>6</sup> Similarly the conditional sales act, approved in 1918, was speedily adopted in five of the same states,—Arizona, Delaware, New Jersey, South Dakota and Wisconsin.<sup>7</sup> The uniform flag act, proposed in 1917, was adopted in six states,—in Louisiana and Maryland in 1918, and in Arizona, Maine, Washington and Wisconsin in 1919,<sup>8</sup> although the Wisconsin law does not follow the phraseology of the model act.

The uniform partnership act, which had been accepted in seven states in 1917, was adopted by four more states,—Virginia taking action in 1918, and Idaho, New Jersey and New York following in 1919.<sup>9</sup> The limited partnership act was more popular, eight states adopting it in 1918–19, the Maryland and Virginia sessions of 1918

<sup>4</sup> *Session Laws*, 1919: Idaho, p. 443; Iowa, p. 507; Oregon, p. 29; Tennessee, p. 303.

<sup>5</sup> California, *Session Laws*, 1919, p. 762.

<sup>6</sup> *Session Laws*, 1919: Arizona, p. 204; Delaware, p. 561; Michigan, p. 546; New Hampshire, ch. 63; New Jersey, p. 500; South Dakota, p. 203; Tennessee, p. 402; Wisconsin, ch. 470.

<sup>7</sup> *Session Laws*, 1919: Arizona, p. 38; Delaware, p. 461; New Jersey, p. 461; South Dakota, p. 123; Wisconsin, ch. 672.

<sup>8</sup> *Session Laws*, 1919: Arizona, ch. 8; Maine, ch. 156; Washington, ch. 107; Wisconsin, ch. 113.

<sup>9</sup> *Session Laws*, Virginia, 1918, p. 541; Idaho, 1919, p. 493; New Jersey, 1919, p. 481; New York, 1919, p. 1162.

both accepting the act, and Idaho, Minnesota, New Jersey, New York, Tennessee and Wisconsin adopting it in 1919.<sup>10</sup>

Four other model uniform laws made somewhat more conservative progress. The uniform law for the extradition of persons of unsound mind was adopted by two states only,—by Maryland in 1918, and by Wisconsin in 1919.<sup>11</sup> The probate of foreign wills act was approved by the New York and Tennessee legislatures of 1919, and the cold storage law and the domestic acknowledgments act were also accepted in Tennessee.<sup>12</sup>

Tennessee adopted six uniform laws; Wisconsin, five; Idaho and New Jersey, four; Arizona and New York, three; Delaware, Maryland, South Dakota, Texas and Virginia, two; and in twelve other states one uniform law was passed.

Every state except Georgia and Oklahoma now has at least two of the uniform laws on their statute books. Thirty-seven uniform laws have been drafted and approved by the national conference, and of these twenty-seven have now been adopted in from one to forty-seven states. Wisconsin has twenty-one of these laws, Maryland and Massachusetts have twelve each, Illinois has accepted eleven, Michigan nine, and New York seven.<sup>13</sup>

If the present tendency is continued several more of these acts will soon become uniform state laws in fact as well as in name.

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<sup>10</sup> *Session Laws*, Maryland, 1918, p. 664; Virginia, 1918, p. 564; Idaho, 1919, p. 474; Minnesota, 1919, p. 653; New Jersey, 1919, p. 471. New York, 1919, p. 1162; Tennessee, 1919, p. 343; Wisconsin, 1919, ch. 44.

<sup>11</sup> *Session Laws*, Maryland, 1918, p. 310; Wisconsin, 1919, ch. 277.

<sup>12</sup> *Session Laws*, 1919, New York, p. 921; Tennessee, pp. 139, 201, 296.

<sup>13</sup> See Proceedings National Conference of Commissions on Uniform State Laws, Twenty-Ninth Annual Meeting, Boston, Mass., 1919; table opp. p. 160.

## JUDICIAL DECISIONS ON PUBLIC LAW

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*Advisory Referendum for Instructing Constitutional Convention—Power of Court of Equity to Enjoin.* *Payne v. Emmerson* (Illinois, December 17, 1919, 125 N. E. 329). This was a taxpayer's action seeking to enjoin the submission to the voters of Illinois of three questions in accordance with the provisions of the so-called Public Opinion Act of 1901. The three propositions were all in the form of instructions for the guidance of the members of the constitutional convention of Illinois which was shortly to assemble. Two of the proposals related to the initiative and referendum and one to the problem of public ownership of public utilities. The submission of these propositions was attacked on the ground that the questions were not questions of public policy within the meaning of the Public Opinion Act, which contemplated the reference to the people only of questions relating to legislative policy and not matters respecting constitutional changes. It was also contended that it was a constitutional right of the citizens to have the delegates to the constitutional convention unfettered by any instructions from the people and entirely free to exercise their own best judgment upon the questions they were called upon to consider.

The court did not discuss these contentions upon their merits but held that the case did not present an opportunity for relief in equity. A court of equity can intervene to protect civil rights but not political rights. The right, if any, which is endangered by the referendum complained of is political in character. Elections are not matters with which a court of equity can interfere without manifest danger to the liberties of the people, and the actual financial loss arising from the cost of such election which any one taxpayer would suffer is insufficient to warrant the issuance of an injunction for its protection.

*Display of Flag of Organization Advocating Principles Antagonistic to Existing Government, Laws, or Constitution.* *Ex parte Hartman* (California, March 13, 1920, 188 Pac. 548). An ordinance of the city

of Los Angeles made it a penal offense for any person to display publicly or privately, or to have in possession, any flag or insignia of any kind of any nation, sovereignty, society or organization espousing for the government of the people of the United States principles or theories of government antagonistic to the Constitution and laws of the United States, or to the form of government thereof now existing. This ordinance the court held to be unconstitutional as violating the "rights guaranteed . . . by the Constitution of this country," although those rights are not specifically enumerated. It is pointed out that the ordinance is couched in language broad enough to forbid the display of the flag or emblem of organizations peaceably urging the adoption of amendments to the federal or state constitutions even though such proposals are innocent and harmless. In a sense any political change may be regarded as antagonistic to the existing order of government and to punish the peaceful and orderly espousal of such change goes beyond the constitutional authority of the city.

*Eminent Domain—Meaning of "Public Use"—Exclusion of Apartment Houses from Residence Districts.* State v. Houghton (Minnesota, October 24, 1919, 174 N. W. 885; same, Minnesota, January 23, 1920, 176 N. W. 159). These cases present an interesting judicial debate upon the question whether by use of the power of eminent domain and the payment of compensation apartment houses may lawfully be excluded from residence districts in cities. By an act of 1915 the legislature of Minnesota authorized cities of the first class to establish residence districts upon the petition of fifty per cent of the property owners in the district sought to be affected, and to exclude from such residence districts a long and varied list of industrial and mercantile establishments together with "apartment houses, tenement houses, flat buildings." The cities were authorized to effect the exclusion of these undesirable buildings or establishments by means of eminent domain and the payment of compensation. The compensation was to be paid out of assessments upon the property of the residents of the districts thus benefited. In this case a mandamus was asked to compel the building inspector of Minneapolis to issue a permit for an apartment in one of these restricted districts.

On the original hearing the court held that this statute and the ordinance of the city council of Minneapolis passed in pursuance of it provided for an unconstitutional use of the power of eminent domain. The majority opinion, written by Judge Dibell, narrowed the issue of

the case to the question whether the condemnation of property rights provided for was for a "public use" or not, inasmuch as it is well established that private property may be taken only for a public use. It was pointed out that the property condemned under these enactments, property in the nature of an easement or restricted use, was not property of which the public could make any actual use. The public gained by such condemnation no right to enter upon or use the property affected. The "use" acquired was merely negative in character. The court further declared that the "public use" for which the property was being taken was public only in the sense that it worked to the advantage and benefit of the surrounding property owners who desired protection from the erection of ugly or inappropriate structures. If the desire or need for protection of this kind is to be regarded as constituting a "public use" for which private property may be taken by right of eminent domain the limits of the doctrine are hard to fix and much injustice may result. "When the humble home is threatened by legislation upon aesthetic grounds, or at the instance of a particular class of citizens who would rid themselves of its presence as not suited in architecture or in other respects to their own more elaborate structures, a step will have been taken inevitably to cause discontent with the government as one controlled by class distinction, rather than in the interests and for the equal protection of all." There is, of course, no question of the police power raised in this case. In fact the supreme court of Minnesota had in an earlier decision held that apartment houses could not be excluded from residence districts by a mere exercise of the police power since there was nothing in their character to justify the conclusion that they could properly be classed as nuisances (*State v. Houghton*, 134 Minn. 226, 158 N. W. 1017).

Two justices dissented from the decision of the majority in this case and filed a brief opinion in which they laid emphasis upon the undesirable results of allowing apartment houses to invade residence districts without restraint and expressed the view that "it is about time that courts recognize the aesthetic as a factor in the affairs of life," and that aesthetic protection is a proper field of legislative control. On a rehearing of the case the dissenting justices won a majority of the court to their point of view, the decision just discussed was reversed, and the statute and ordinance in question were held constitutional. The opinion of Judge Holt admitted that the public received no actual, physical use of the property taken by eminent domain, and that only a portion of the public could reasonably be said to be benefited by the taking. His opinion is in effect a vigorous protest against a narrow and in-

elastic definition of the term "public use" in the law of eminent domain. The meaning of "public use" must expand with time and the needs of society and purposes which are intimately connected with the welfare of the community or a substantial portion of it may legitimately be furthered by the condemnation of private property rights. Apartment houses are a menace to the welfare of people living in residence districts. They destroy the beauty of the neighborhood and bring about depreciation in the value of surrounding property. This results in loss to the owners of the property affected and loss to the city in the form of diminished taxable values. "Giving the people a means to secure for that portion of a city wherein they establish their homes, fit and harmonious surroundings, promotes contentment, induces further efforts to enhance the appearance and value of the home, fosters civic pride, and thus tends to produce a better type of citizens." It is the conclusion of the court that property condemned for such purposes is condemned for a public use.

It will be observed that the clash of opinion in these two cases presents an issue by no means new. There have long been two distinct interpretations applied to the term "public use" in the law of eminent domain. One of these would make "public use" synonymous with "use by the public" and thereby limit the taking of private property to the cases in which the public actually acquires title and possession. The opinion of the majority in the first case examined approximates this point of view. This doctrine has the very obvious advantage of providing an explicit and unvarying test by which courts may determine whether or not the use for which property is being condemned is public or private. It is doubtless this definiteness which has commended it to the approval of an overwhelming majority of courts and commentators (Lewis, *Eminent Domain*, Secs. 257-258). The opposing view is that "public use" in eminent domain should be construed to mean "public welfare" and that any taking of private property which can be justified upon this broad ground may be sustained. It is this doctrine upon which Judge Holt bases his opinion in the second case. While it commands the adherence of only a small minority of the courts which have passed upon it, strong pressure is being exerted in its behalf. The adoption of this more liberal doctrine of public use seems necessary if the condemnation of various types of easements, or excess condemnation, are to be employed in the working out of city planning programs and it seems probable that its acceptance will tend to spread in spite of the dangers which are undoubtedly connected with it.

*Freedom of Speech—Power of States to Prohibit Disloyal Language During War.* Ex parte Meckel (Texas, Court of Criminal Appeals, May 21, 1919, on motion for rehearing March 19, 1920, 220 S. W. 81). The legislature of Texas passed a Disloyalty Act making it a felony for any person to utter in the presence of any other person language disloyal to the United States in time of war, or language which, if uttered in the presence of an American citizen, would be reasonably calculated to provoke a breach of the peace. Meckel was convicted under the act and on petition for a writ of habeas corpus urged that the act was unconstitutional because it violated the guarantee of freedom of speech found in the constitution of Texas, and because it was an attempt on the part of the state to exercise war power which belonged exclusively to Congress. The court of criminal appeals construed the act as one designed to prevent breaches of the peace which might occur if disloyal language were uttered in the presence of American citizens. Viewed in this light the court found no difficulty in upholding the statute as a legitimate exercise of the police power of the state. It suggested, however, that if the act were interpreted as creating an offense other than that of provoking breaches of the peace there would be grave doubts as to its constitutionality.

On motion for rehearing the court adopted a different view of the meaning and intent of the statute. This new construction was urged by the state. Under it the act would provide, as paraphrased by the court, "If any person in time of war, in the presence and hearing of another person . . . use any language . . . which language . . . is of such a nature as that in case it is said in the presence and hearing of a citizen of the United States, it is reasonably calculated to provoke a breach of the peace, such person shall be guilty of a felony." So construed the court held the statute unconstitutional upon two grounds. In the first place, it abridged freedom of speech as guaranteed by the bill of rights of the state constitution because it penalized the utterance of disloyal language even when such language was spoken under circumstances which would not tend to produce a breach of the peace, namely in the presence of persons who were not American citizens. The power of the state to curb freedom of expression is limited to such measures as will prevent breaches of the peace and does not extend to the penalizing of language which is disloyal per se. In the second place, the punishment of persons who speak disloyally during time of war but do not incite breaches of the peace is the function of the federal government exclusively.

"The prohibition of the use of disloyal language per se as a war measure, is admittedly the subject of federal legislation, and not within the purview of the regulatory power of the states."

This decision seems to be unique. It is the first case apparently in which a statute punishing disloyal utterances during time of war has been held to invade the freedom of speech guaranteed by constitutional provision. In holding that the state may not legislate in such a manner as to aid the federal government in the exercise of the war power the opinion in this case is in conflict with the decisions of the courts of Minnesota<sup>1</sup> and New Jersey.<sup>2</sup> In each of these cases it was held that the state could aid in the prosecution of the war, provided only that the state laws enacted for that purpose did not conflict with congressional legislation upon the same subject. This seems to be the correct rule, not only with reference to the war power of Congress but also with respect to other spheres of federal authority, and it is doubtful if the doctrine of the Texas court of criminal appeals in this case will meet with approval upon this point.

*Involuntary Servitude—Liability to Master of One Hiring Servant Who Breaks Contract of Employment.* Shaw v. Fisher (South Carolina, February 23, 1920, 102 S. E. 325). This was an action for damages brought against the defendant for enticing away from the plaintiff a servant who had contracted with him to work as a share cropper for a period of one year. The defendant employed this servant after having notice that he was under contract to the plaintiff. The court decided that the defendant's conduct in the matter was not actionable. While the common law recognized a right of action in such a case the Thirteenth Amendment to the federal constitution abolished any such common law doctrine. The validity of a statute or rule of law must be determined by its operation and effect. To allow the plaintiff to recover damages from any one who employed a servant who broke a contract of employment with the plaintiff would in effect compel the servant to remain against his wishes in the employ of the plaintiff since it would make it impossible for him to secure work elsewhere. The servant has the right at any time to break his contract of service and be subject only to liability for damages. Any pressure direct or indirect which deprives him of this right must fall within the prohibition against involuntary servitude.

<sup>1</sup>State v. Holm, 166 N.W. 181, see *American Political Science Review*, May, 1918, p. 286.

<sup>2</sup>State v. Tachin, 106 Atl. 145, *idem*, August, 1919, p. 498.



*Police Power—Power of State to Regulate Ordinary Mercantile Prices.* A. M. Holter Hardware Co. v. Boyle (United States District Court, Montana, January 13, 1920, 263 Fed. 134). The legislature of Montana enacted a statute creating a trade commission and giving it power to regulate business and to "establish maximum prices or a reasonable margin of profit" in respect to all commodities. Action was instituted in this case to restrain the enforcement of this law. The United States district court held the act void as a deprivation of property without due process of law. It has long been established that the power of government to regulate prices extends only to businesses which are affected with a public interest and not to the sale or production of the ordinary commodities of commerce. While the list of businesses which are thus affected with a public interest has expanded with the passage of time, the courts of this country from the Supreme Court down have adhered to the doctrine that the element of public interest must always be present to justify the control of prices. The business must be one "wherein its proper conduct concerns more than the parties to any single transaction, wherein by reason of peculiar circumstances the business sustains such relation to the public that they are affected by its consequences." This element of public interest is entirely lacking in the forms of business which the statute seeks to subject to control. The act therefore interferes unreasonably with private property rights, with individual freedom of contract, and accordingly amounts to a deprivation of property without due process of law.

*Primary Election—Right of a Democrat to Become a Candidate for Republican State Committeeman.* German v. Sauter (Maryland, February 18, 1920, 109 Atl. 571). This case is instructive as showing the pitfalls which lie in wait for the careless legislator. The general laws of Maryland relating to primary elections provide that it shall be the duty of the supervisors of elections to print on the official ballots the names of all candidates for public offices or for offices or committee membership in political parties, provided that each candidate pays such fees as may be required and files a certificate setting forth his residence, the name of the office for which he is a candidate and the party to which he belongs. The law does not require that a candidate for nomination at the hands of a particular political party need be a member of that party. The court held in this case that they had no authority to add to the requirements or qualifications for nomination

set forth in the law and that therefore Sauter, who was an affiliated Democrat and who was consequently under the law unable to cast a vote in a Republican primary, could compel the supervisors of elections to place his name on the ballot as a candidate for Republican state committeeman.

*Referendum—Applicability of Emergency Clause Provision to Acts Passed by Special Session of Legislature.* State v. Olson (North Dakota, January 16, 1920, 176 N. W. 528). A special session of the legislature of North Dakota convened in November 1919 and passed a substantial number of acts designed to reduce the authority of several of the executive officers of the state who had been involved in a political disagreement with the governor. At the close of the session the legislature passed an act providing that all acts passed at any special legislative session should go into effect within ten days of the date of enactment unless the legislature by a vote of two thirds shall declare them to be emergency measures in which case they shall be effective immediately. The constitution of North Dakota provides that the acts of the legislature shall not go into effect until the first day of July following the close of the session unless the act shall by a two-thirds vote of the assembly be declared an emergency measure. During the period in which they are thus suspended the acts of the legislature are subject to referendum by the people upon the filing of a petition in accordance with the provisions set forth in the constitution. Thirty-nine of the acts passed by the special session of 1919 were passed by less than the majority of two-thirds requisite to make them emergency acts and petitions calling for their referendum to the people were promptly filed. The question whether these acts were constitutionally subject to referendum is the point involved in this case.

It was urged upon the court that the constitutional provisions respecting emergency legislation were not applicable to special sessions of the legislature but only to the regular sessions, and that therefore the special session had the power to put its enactments into operation without delay irrespective of the constitutional clauses above mentioned. This view was supported by the argument that to suspend the operation of statutes passed by a special session until the first of the following July would mean in some cases a suspension of practically a year and produce a situation which could not have been within the contemplation of the framers of the constitutional provisions in question. The court found itself unable to agree with this point of view.

It declared that the constitution recognized no difference in powers or duties between a regular and a special legislative session and that there was no basis upon which to rest the view that special legislative sessions should be exempted from the application of the clause relating to the passing of emergency measures. The act providing that the laws passed by the special session should become operative within ten days after enactment was accordingly unconstitutional, and the acts which had not been declared by the requisite two-thirds majority to be emergency measures were subject to referendum in the usual manner.

*Suffrage—Extension to Women in Primary Elections by Legislative Act.* Hamilton v. Davis (Texas, Court of Civil Appeals, December 13, 1919, 217 S. W. 431). A statute of 1918 granted to female citizens who have all the qualifications of electors except that of sex the right to vote in primary elections. The appellant was a candidate for nomination for the state legislature and sought an injunction restraining the enforcement of the act on the alleged ground of its unconstitutionality. His contention was that the word "election" as used in section 2, article 6 of the Texas constitution defining the qualifications of voters includes primary elections. The court rejected this view and upheld the validity of the law. While previous decisions had held that primary elections were within the meaning of the constitutional provisions giving the courts jurisdiction in cases of contested elections, the court declared that it was unnecessary to attach the same meaning to the word election wherever it was used. It should be construed in the light of the purpose of the provision in which it was used. While it should be interpreted broadly in the clause relating to contested elections so that the remedial purpose of that provision might have the fullest possible effect, it should be construed strictly when used in the clause defining the qualifications of voters so as not to "thwart the effort of the legislature to extend a valuable privilege to a worthy class of citizens." The correctness of this construction is further emphasized by the fact that state legislatures have frequently established different qualifications for voting in primary elections from those which apply in general elections. It is common for primary statutes to require test oaths of party allegiance as a condition of voting in the primary, although the requirement of such oaths would be clearly unconstitutional if applied to regular elections. If a legislature may enact that only members of political parties shall participate in primary elections it may with equal propriety extend that privilege to women.

*Taxation—Public Purpose—Reclamation of Waste Lands for Homestead Purposes.* *State v. Clausen* (Washington, March 30, 1920, 188 Pac. 538). An act of the legislature of Washington passed in 1919 authorized the creation of a state reclamation board endowed with very wide powers. This board was authorized to acquire for the state private property suitable for farms and farm laborers' allotments, to make such improvements as might be necessary to render the land habitable, to allot it to applicants either by lease or sale in accordance with restrictions set forth in the statute. In the allotment of these homesteads soldiers were to be given preference. This case hinged upon the question whether the expenditure of the money of the state for such a purpose was constitutional in view of the well established rule that taxes may be levied only for a public purpose. It was alleged that the expenditures provided for were for the benefit of private individuals and were not for a public purpose.

The court held that the purpose for which the proposed expenditures were to be made must be regarded as public. It comments at length upon the difficulty of drawing a distinct line between public purpose and private purpose in taxation, and declares that in the border line cases the question frequently resolves itself into one of opinion as to wisdom and expediency rather than a question of law in the strict sense. Courts must be exceedingly cautious not to usurp the functions of the legislature in these cases and must accord deference to the legislative judgment in all cases of doubt. Public purpose in the law of taxation is a term which expands with the progress of civilization. To define it only in terms of custom and usage would mean complete stagnation in the law. Purposes which were not regarded as public in years gone by have come to be recognized as proper objects of taxation now. It cannot be denied that the act in question contemplates the expenditure of public money for a purpose from which the state at large will reap substantial benefits. While opinions differ as to the legal propriety of these expenditures there is not sufficient doubt as to the public purpose of the proposed taxation to warrant the court in reversing the legislative determination upon that point.

A brief but vigorous dissenting opinion urged that the statute provided for the levying of taxes for a private purpose and that the majority opinion declaring the purpose public "stretched to the breaking point all fundamental ideas of what is meant by that term." Relying chiefly upon the well known case of *Lowell v. Boston*, 111 Mass. 454, the dissenting justices concluded that no public purpose was served "by this attractive bit of paternalistic legislation."

## FOREIGN GOVERNMENTS AND POLITICS

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**Changes in British Parliamentary Procedure.** One of the most interesting of the developments arising from the extensive legislative program which faced the first British Parliament under the Franchise Act of 1918 was the drastic amendment in February, 1919, of the rules of procedure of the house of commons. The address from the throne stated the necessity and the purposes of the proposed changes, declaring:

"A large number of measures affecting the social and economic well-being of the nation await your consideration, and it is of the utmost importance that their provisions should be examined and, if possible, agreed upon and carried into effect with all expedition. With this object in view, My Government will invite the consideration of the House of Commons to certain proposals for the simplification of the procedure for that House which, it is hoped, will enable delays to be avoided, and give its members an increasing opportunity of taking an effective part in the work of legislation."

In the debate upon the address, Mr. Lloyd George foreshadowed the nature of the government's proposals by saying:

"I am certain that our present methods of examining legislation, of having 600 men scrutinizing every line, every word, every comma, for weeks in the presence of the Press, is a futile method of transacting business. . . . As long as the House of Commons accepts the main outline of the measure, it is fatal to business to insist upon every member of the House taking part in a close scrutiny of every word."

And when the attorney-general presented the plan he declared:

"The object of the proposals is at least threefold. It is, in the first place, to save the time of the House. It is, secondly, to accelerate the progress of business, and also it is, by avoiding waste of time and energy, to improve the real opportunities of criticism and discussion."

The changes which were then outlined included, first, an increase in the number and importance, and a decrease in the size, of the standing, or grand, committees; second, a rule regularizing kangaroo closure by

making the power of selecting amendments for debate a permanent and no longer a temporary attribute of the authority of the chair; third, the reference of the estimates, with certain exceptions and under certain restrictions, to standing committees; fourth, several less drastic changes in procedure designed to save time in the passage of bills through the house. Three days were occupied by the discussion of these proposals, and the debate furnishes one of the best expositions ever given of the theory and practice of the procedure of the house of commons. In the end most of the government proposals were adopted as standing orders, although some modifications were made, and the rule empowering standing committees to consider the estimates was passed for the session only.

The purpose of the changes in the committee system was frankly set forth by Mr. Bonar Law as, "getting the bulk of the business done by committees. And," he added, "that does mean a real revolution in the procedure of the house of commons." In number the committees were increased from four to six, and in size decreased from 60-80 to 40-60, with the provision that the committee of selection should have power to add not less than ten nor more than fifteen members to a standing committee in respect of any bill referred to it, to serve during the consideration of that bill. The provision that at least ten "experts" should be added was the result of a desire in the house to assure the competency of the committees to handle the important bills now proposed to be referred to them. It was not, however, applied to the committee on Scottish bills, which committee was continued, as was that for the consideration of bills relating exclusively to Wales and Monmouthshire. The chairmen's panel was increased from 4-8 to 8-12, while the quorum for standing committees was left at twenty.

Besides adding to the number of the grand committees, the new rules increase their working capacity by allowing them to sit while the house is in session. Prior to 1919 no such committee could sit while the house was sitting except in pursuance of a resolution moved by the member in charge of the bill before the committee and decided without debate; nor could any such committee sit before four o'clock without an order of the house. The new rule, S. O. 47 (1), provides:

"Standing committees may sit during the sitting, and notwithstanding any adjournment, of the house. On a division being called in the house, the chairman of a standing committee shall suspend the proceedings in the committee for such time as will, in his opinion, enable members to vote in the division."

Further, rule 49A provides:

"In order to facilitate the business of standing committees, a motion may, after two days notice, be made by a minister of the crown at the commencement of public business, to be decided without amendment or debate, 'that this house do now adjourn,' provided that if on a day on which a motion is agreed to under this standing order leave has been given to move the adjournment of the house for the purpose of discussing a definite matter of urgent public importance, Mr. Speaker, instead of adjourning the house, shall suspend the sitting until a quarter past eight of the clock."

The government declared, however, that it would use the authority thus granted not regularly, but only as a last resort.

These rules, together with that permitting the reference of the estimates to a standing committee, and the avowed determination of the government to send "upstairs" all bills but the finance bill, the appropriation bill, and small bills of a noncontentious kind indicate a realization by all concerned that the legislative capacity of the parliamentary machine was entirely inadequate for the passage of measures made imperatively and urgently necessary by post-war conditions. The delegation of legislative power, the removal of many members from the house to the committee rooms while the house is in session, and the consequent rush through the division lobbies of members who have not heard debated the question upon which they are voting were declared by many members to be changes which would destroy both the prestige and the self-respect of the house of commons. The government's unanswerable reply was that without these changes of procedure the house could not by any possibility put through the program of social and industrial reform which the situation demanded, and that its failure to do so with reasonable promptitude would result not only in a loss of prestige for the house of commons, but in the destruction of popular belief in representative government as it exists in England. This argument, of course, was used in connection with all of their proposals.

The chief provision made by the new procedure for speeding up bills in the house itself relates to the selection of amendments for debate, and is as follows (S. O. 27A):

"In respect of any motion or any bill under consideration either in committee of the whole house or on report, Mr. Speaker, or in committee, the chairman of ways and means, and the deputy chairman, shall have power to select the new amendments or clauses to be pro-

posed, and may, if he thinks fit, call upon any member who has given notice of an amendment to give such explanation of the object of the amendment as may enable him to form a judgment upon it."

Under the old rules this power could not be exercised by the chair except under authority of a special order in each case—an order which it usually required a considerable amount of time to pass. The new rule obviates such delays, makes unnecessary closure by compartments, by which whole clauses were voted with no discussion whatsoever, and provides a reasonable method for the selection of those subjects the discussion of which is most desirable. A possible drawback is the addition to the constantly increasing burden which has been laid upon the speaker during recent years.

Other changes which were made to reduce delay in the passage of bills through the house may be noted.

S. O. 30 was amended to provide that when the speaker or chairman deems a division "unnecessarily" claimed he may take the vote of the house by calling upon members who support and who challenge his position to rise in their places, "unnecessarily" having been inserted in place of "frivolously or vexatiously" in order to enable the rule to be applied in a wider range of cases.

S. O. 31A eliminates superfluous divisions at second and third readings by providing that, "If on an amendment to the question that a bill be now read a second time or the third time it is decided that the word 'now' or any words proposed to be left out stand as part of the question, Mr. Speaker shall forthwith declare the bill to be read a second time or the third time, as the case may be."

S. O. 40A provides that a motion to recommit a bill, if opposed, shall be discussed under the ten minute rule, only the member who moves recommitment and one other member to be heard.

S. O. 7A exempts from the eleven o'clock rule proceedings upon the report of the committee of ways and means, and committees authorizing the expenditure of money, except the committee of supply.

S. O. 71A provides that when a resolution authorizing the expenditure of money in a certain bill is sanctioned by a committee, and notice is given, the report stage can be taken at once instead of being deferred to another day.

S. O. 71B makes it possible to receive a resolution of the committee of ways and means authorizing the issue of money out of the consolidated fund, and to pass this money bill through the report stage and third reading on the same day. These stages frequently had been



taken in one day under special order of the house. The new order makes such procedure the regular one.

Although somewhat technical, all of these new rules are clearly designed to expedite the business of the house, both by simplifying the normal procedure, and by reducing the opportunities for deliberate obstruction.

The most striking changes in procedure which the needs of the new order in England has compelled, however, were those which permit the discussion of the estimates in standing committee. From 1707 it had been the rule of the house that money bills should be considered only in committee of the whole. Because such consideration was supposed to give the house an opportunity to scrutinize and to criticise the conduct of every part of the government when the appropriation for that part was voted, the provision had long been regarded as one of the cornerstones of parliamentary supremacy. The proposal to rescind the rule met with determined resistance. It was declared that the primary business of Parliament was not legislative but critical, and that to deprive the house as a whole of its traditional power to criticise and control the executive through the discussion of the estimates would destroy its most useful function. The discussion, however, gave rise to a general admission that the existing system did not in practice give the house of commons an effective control over the estimates in their financial aspects; and upon the abandonment by the government of its proposal to reduce the number of days for the consideration of supply in the committee of the whole from twenty to twelve the great innovation was adopted, for the session only. The rules provide:

1. All estimates except Votes A and 1 (personnel and pay) of the army, navy, and air force estimates shall be referred to a standing committee instead of to the committee of supply.

2. The estimates shall be allotted to the standing committees by the speaker, and shall be considered by them under the customary procedure of the committee of supply.

3. Upon the adoption of a motion made by a minister any specified estimates or votes shall be withdrawn from the standing committees and considered in committee of supply.

4. The speaker shall leave the chair forthwith when the orders of the day for the consideration of any votes other than a vote of credit in the committee of supply shall be read.

5. A standing committee may report from time to time resolutions upon which it has agreed, and these shall be proceeded with as though they had been reported from the committee of supply.

6. The government shall have authority to fix the rotation in which votes are to be taken in standing committee, and to determine whether estimates of bills shall be considered on any particular day.

7. S. O. 15, regulating the business of supply, shall apply only to such business in the house or in a committee of the whole; supply shall no longer be the first order of the day on Thursday; the rule which required the submission of new estimates not later than two days before the committee of supply is closed shall have no effect.

8. The committee of selection shall have the power to add not less than ten nor more than fifteen members to any standing committee to which estimates are referred, to serve on that committee during the consideration of any specified estimates.

Viewed in their entirety these modifications of procedure very evidently are the logical development of tendencies in the evolution of standing orders which, as Dr. Redlich points out, have governed changes made in the rules since 1832. They were made to save the time, or to alter the distribution of the time, of the house, and to reduce further the possibility of obstruction. But although in adopting them the house made serious efforts to increase its working capacity, it cannot be said to be satisfied with the results of the innovations. Within a few months it became evident that while the house had not vastly increased its legislative output by simplifying its procedure and dividing itself by six, it had introduced a system which was giving rise to other ills, some of them of a disquieting nature. As had been predicted, the grand committees drew so many members from the house itself that the discussion of constitutional measures of the utmost importance was regularly conducted before empty benches. Furthermore, the standing committees in many instances deprived the house of the control which it had been wont to exercise over the details of great bills. This had been foreseen; but in practice the house did not like the change. And the committees themselves, even the committee to which the estimates were referred, had great difficulty in regularly securing quorums. Members complained of being expected to be in several places at the same time, and the house generally felt overworked and dissatisfied.

These sentiments found expression in a debate early in June, 1919, on the proposal to create a parliamentary body to consider devolution. In seconding the motion for such a body, Mr. Murray Macdonald probably expressed the consensus of opinion concerning the situation when he said that the motion:

"rested on the opinion that Parliament had more work than it could adequately perform. . . . Only two alternative remedies had been suggested. The first was by changes in the rules regulating business in the house; the second was that embodied in the motion under consideration. Many changes in procedure had been made, all with the same object, and they had totally failed to accomplish their purpose."

The result was the appointment of the speaker's conference on devolution; and it is safe to assume that the recognition that the new rules have not made, and that no rules can make, it possible for Parliament to perform its present duties satisfactorily, will go far towards securing favorable consideration for whatever proposals this conference may eventually make.

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**Swiss Referendum on the League of Nations.** The Swiss referendum of May 16 on the League of Nations was the most important vote of its kind in the history of the republic. All other countries entering the league thus far have done so by parliamentary and executive action, that is, through purely representative means. Switzerland alone referred the question to the direct decision of her electorate. To Americans her action is of interest, not only because of its thoroughly democratic character, but also because we are confronting the same question as the paramount issue of our domestic and foreign politics at the present time.

There can be no doubt that the Swiss people understood thoroughly the fateful nature of the decision they were called upon to make. They witnessed the great war from within its very midst; in spite of their neutrality they suffered and are suffering considerably from its consequences; and they have followed every step taken since the armistice with the deepest interest. A vigorous campaign of education carried on by the press, by political parties, and by propagandist committees of every description preceded the referendum vote itself. With few exceptions the discussion of the issue was conducted upon a high plane. Some vague charges were made of the use of Entente gold to influence the vote, but they were speedily denied and discredited. In spite of the deepest feeling on both sides, personalities were conspicuously absent. A minor point of interest may be found in the active and effective part taken in the campaign by many prominent clergymen, both Protestant and Catholic.

Acceptance of membership in the league was strongly favored by the powerful Independent Democratic (Radical) party, the Liberal Democratic (Protestant Conservative) party, the recently formed anti-bolshevist Peasants' party, the Christian Social party, and the *Grütli*aner. The Catholic Conservatives were divided, some of their most eminent leaders, both lay and clerical, being found in opposing camps. The Socialists who have accepted bolshevist leadership fought the league with all their accustomed arguments and bitterness. Curiously enough, the same attitude was taken by a group of the higher officers of the Swiss army, led by Ulrich Wille, the former general in chief. Party lines were more or less cut across, however, by racial, linguistic, religious and personal prejudices.

A very marked influence upon the referendum was exerted by the federal council, all seven members of which not only favored the league but also campaigned for it vigorously throughout the country. Further, the federal council on May 7, officially issued a powerful appeal to the Swiss people urging them to vote affirmatively. This appeal expressed the deepest conviction that "a decision of the people against the league would bring with it irreparable damage to the prosperity of Switzerland, to the unity of the country, and to the respect which it enjoys abroad. It would involve the gravest danger to our commerce, our industry, and our agriculture. The League of Nations will gradually unite all the states of the world. Already it embraces four-fifths of mankind. The League of Nations aims at the protection of labor; it assures just consideration to the mutual commerce and intercourse of its members; it promotes the development of international law. It opens the way to gradual disarmament and seeks to settle controversies arising between nations by judicial arbitration and peaceful mediation. Above everything else it will hinder or make difficult the beginning of armed conflicts. Switzerland cannot refuse her coöperation when humanity undertakes by a broadly devised plan to bring justice and peace to the world."

To partisans and opponents of the league alike the principle of neutrality, consecrated by the history and imbedded in the constitution of Switzerland itself, was the central point of the whole controversy. The advice of Bruder Klaus: "*Eidgenossen, mischet euch nicht in fremde Händel*"—a Swiss analogue to the counsel given by Washington in his Farewell Address—was resurrected from the fifteenth century and made to do valiant service in advertisements and placards. Although the council of the League of Nations on February 13 of this

year formally guaranteed the military neutrality and inviolability of Switzerland, the enemies of the league protested as unneutral the obligation to take economic measures against possible recalcitrant states, holding this moreover to be a despicable kind of "hunger warfare," certain to lead to military reprisals by the aggrieved state and probably to the invasion of Switzerland and the seizure of Geneva as the capital of the league. The military futility of such action deprived the latter argument of any real force. Regarding neutrality the appeal of the federal council, referred to above, held that: "Entry into the League of Nations in no way diminishes our independence, on the contrary it strengthens it. It involves no denial of our traditional neutral policy of peace; rather will it permit us to pursue that policy in broader ways."

Although not entering largely into public discussion, there was an underlying fear that rejection of the league might cause grave disaffection, perhaps even a secessionist movement, in Romance Switzerland. Opponents of the league made the utmost of the failure of the United States to ratify, but this was discounted as due almost entirely to partisan and anti-Wilson rancor prior to a presidential election. Very little was said openly about German influence, but it seems to have been generally accepted that the Junker and bolshevist elements of Germany desired the Swiss to reject the league, while all the elements supporting the present government of that country favored its acceptance. Certain it is that Dr. Müller, German ambassador to Switzerland, openly expressed the wish to Federal President Motta that "the hopes and efforts of the federal council in favor of the entry of Switzerland into the League of Nations might be realized."

One of the curiosities of the campaign was an argument widely disseminated in certain clerical circles to the effect that Clemenceau, Lloyd George and President Wilson were all notorious free masons, and the league itself a free masonic conspiracy against God, religion and the Pope.

The referendum resulted in a popular vote of 415,819 for to 323,225 against the league. It is estimated that about 76 per cent of the electorate voted, which is a very high, although not the highest, percentage of participation on record. The vote by cantons was not so decisive as the substantial popular majority of 92,594. Eleven and a half cantons were carried for the league, ten and a half against it. A change of ninety-four popular votes in Appenzell Exterior would have tied the state vote and defeated the league. Of the larger cantons Bern, Vaud

and Luzern were for the league; Zürich, St. Gallen and Aargau against it. In Romance Switzerland the popular vote was overwhelmingly in favor of the league, being estimated at 171,000 for to 31,000 against. In German speaking Switzerland the vote stood about 244,000 for to 292,000 against the league.

Deep as were the divisions among the Swiss people on this issue the morrow of the referendum showed them ready to accept the popular verdict without question. Only the future can decide whether their decision was for the weal or the woe of their country. Meanwhile, however, Switzerland enters the league in good faith, people and government alike loyally determined to do all in their power to make it a success. An American may be pardoned the regret that an equally clear-cut popular decision, free from all extraneous considerations, is not possible in his own country.<sup>1</sup>

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<sup>1</sup> The writer desires to express his cordial thanks to Mr. S. Meier, editor of the *Amerikanische-Schweizer Zeitung* for a very complete file of Swiss exchanges on this subject.

## NOTES ON INTERNATIONAL AFFAIRS

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**The Outlook for International Law.** Now that a year has elapsed since the signing of the Treaty of Versailles it is possible to survey the more immediate effect of its provisions upon the rules of international law in force in 1914, as well as to examine the general effect which the war itself has had in preparing the way for the establishment of new legal relations between the nations. From the outset it is clear that the high hopes which idealists entertained that the close of the war would be followed by a new era of international relations have not been fulfilled. The vision of a "governed world," of a federated republic of the nations, of an international commonwealth, is still a dream of the future, not a picture of things fulfilled. For the moment the old order continues in all of its essential respects. The individual interpretation by each nation of its rights and duties and the individual arming by each nation for self-protection have not yet been definitely renounced by the foreign offices of the states. Trade rivalries which had been subdued in part by the conditions of the war have sprung up again with renewed sharpness and animosity. The territorial lines marked out by the treaty have given rise to disputes outnumbering many times the dissensions of the decade preceding the war. Yet as against these signs of an unreconstructed world of nations there are on the other hand signs of progress towards the development of a more logical and more effective system of international law. If little advance has been made towards the desired goal, at least the goal itself has been erected, and the mind of the nations has been prepared for more rapid progress towards it in the near future.

*A New Basis of International Relations.* In the first place the legal foundations upon which an effective system of international law may be based have been defined with greater clearness than ever before. It is not too much to say that a new conception of international law has been brought about in the realization that the nations as a body must assume the obligation of maintaining the peace of the world.

Before the war there was an open recognition of the attitude of neutrality on the part of third powers in the event of a war between two or more members of the international community. Public opinion had by tradition the right to express itself in cases of manifestly unjustified aggression; but it never undertook to condemn war itself as a means of supporting the just claims of one nation against another. War was a legal remedy, to be resorted to at the discretion of the injured party; and provided the war was conducted in accordance with the established usages its results, as recorded in the treaty of peace, were not vitiated by the fact that force had been used to obtain them. This traditional recognition of the legality of war and of the right of neutrality on the part of parties not directly concerned has now been replaced by a definite conception of the collective responsibility of the nations at large to see that justice prevails in the relations of state to state. The Covenant of the League of Nations gives clear expression to this fundamental principle of law. Article XI states in explicit terms that "any war or threat of war, whether immediately affecting any of the members of the league or not, is hereby declared a matter of concern to the whole league, and the league shall take any action that may be deemed wise and effectual to safeguard the peace of nations." This is a clear intimation of the adoption of the principle of collective responsibility, and it is further strengthened by the agreement set forth in Article XVI that if any of the contracting parties should break the several covenants to arbitrate it shall thereby "ipso facto be deemed to have committed an act of war against all the other members of the league." Measured against the feeble *vœux* expressed by the Hague Conferences of 1899 and 1907 this declaration of the covenant of the league is seen to be of fundamental importance. It becomes, as it were, the cornerstone of a new system of international law. The absence of the United States from the membership of the league lessens, indeed, the authority of the new principle; but even in the case of the United States this particular article of the league may, by inference from the vote upon the treaty, be said to have been accepted by a large majority of the senate.

The acceptance of the principle of collective responsibility in what is as yet a qualified form has been supplemented by the further recognition that if international law is to have the force and effect of law it must have behind it a more definite sanction than that which has hitherto been its support. The old problem of the text books, as to whether international law, lacking a physical sanction, was true law,



may still be debated as a point of academic interest, but it is clear that unless a definite physical sanction can be supplied the range of international law cannot be extended beyond its narrow confines of 1914. It is a small matter whether we concede or deny that international law was true law within the limited scope assigned to it before the war. What is of importance is that international law cannot be extended to cover the vital interests of the nations, which are involved in the disputes that lead to war, unless the public opinion of the nations be so organized as to be able to compel acquiescence in its decisions. Public opinion may be an effective sanction in cases where nothing further is involved than the settlement of fishing rights or of a boundary line, but it cannot be relied upon where urgent national interests are at stake. The Covenant of the League of Nations recognizes the need of such a sanction and provides in Article XVI that a breach of the covenants to arbitrate shall, as we have seen, be regarded as an act of war against all the other members of the league and shall thereupon be followed by a "severance of all trade or financial relations" between the members of the league and the offending state. Should this economic boycott prove ineffectual, the council of the league is authorized in such case "to recommend to the several governments concerned what effective military or naval force the members of the league shall severally contribute to the armed forces to be used to protect the covenants of the league." The agreement to use force is, therefore, a conditional one, being adopted as a substitute for the proposal of an international army and navy; but even in its qualified form it marks the recognition that public opinion of itself is an inadequate sanction of the law.

It need scarcely be said that the acceptance of the principle of collective responsibility and the adoption of a physical sanction of international law both encroach upon the traditional principle of the sovereignty of the individual state, and there are signs, especially in the United States, that the old theory is dying hard. Of all the outworn conceptions of international law sovereignty is the most illogical. In the restricted sense of national autonomy in matters of internal self-government it has, of course, a very real meaning, and one which has been qualified in no way by the agreements contained in the covenant of the league. But in its wider sense of the right of each state to be the arbiter of its own claims and obligations, and to determine for itself the extent of its armaments for self-protection, "sovereignty" was and is a standing contradiction to the most elementary concep-

tions of law. A world of literally sovereign nations is a world of anarchy. Even before 1914 the reality of sovereignty had long since been abandoned in the presence of the intimate commercial and social relations of the nations. Henceforth the term must be used with caution, emphasis being laid upon the distinction between domestic self-government and the right of arbitrary judgment.

*The Persons of International Law.* Some little progress may be recorded in the development of more definite rules regarding the persons of international law. The old distinctions between sovereign and semi-sovereign states, between those who were members of the family of nations and those who were not, have now been practically abandoned, but no satisfactory substitute has yet been found to take their place. The so-called great powers have for the time being been reduced in number from eight to five, while the rival alliances which divided the great powers of 1914 have disappeared. But on the other hand a sort of qualified legal standing in international law has been given to the five great powers by constituting them a majority group of the Council of the League of Nations. Provision is made in the covenant of the league that in addition to this permanent group four other states shall be represented upon the council, the designation of these latter to be made by the assembly; and provision is further made for subsequent increases of membership. Thus far the selection of these additional members has not been made, and in consequence the organization of the league has been criticized as being an attempt on the part of the great powers to perpetuate their exclusive position within the international community.

Membership in the League of Nations will doubtless become in the future the test of international personality, and will replace the ill-defined status of membership in the "family of nations." It will be observed that the league already contains several members not included in the family of nations of 1914. The four British self-governing dominions, together with India, have been admitted to membership, and a new rule of international law is thus introduced which permits a state to possess international personality while remaining formally a dependent member of a larger empire. The situation is without precedent in international law. Before 1914 Canada could only have obtained recognition of its separate international personality by successful revolt against the mother country, and no proof of its *de facto* autonomy would have entitled it to a place in the councils of the nations, although it may be noted that Canada had already secured for itself a

qualified position in international affairs by reason of the separate commercial treaties made between Canada and other states. The right conferred upon the British dominions and India of voting in the assembly of the league has, however, raised the issue whether the British Empire is not thereby overrepresented in the assembly, and in consequence one of the reservations adopted by a majority of the United States senate proposed that these five votes be not counted when disputes involving Great Britain were before the assembly.

Several new states appear on the list of members of the league. Czechoslovakia, Poland and Hedjaz obtained membership as signatories of the Treaty of Versailles. Yugoslavia, the "Serbo-Croat-Slovene State," signed the treaty, but to March 20 had failed to ratify it. It is of interest to note that the three European states were admitted to membership of the league subject to certain definite conditions contained in the treaties of peace with Germany and Austria. In the treaty with Austria, Czechoslovakia and Yugoslavia agreed to embody in a special treaty with the principal allied and associated powers such provisions as might be deemed necessary to protect racial, linguistic, or religious minorities, and to assure freedom of transit and equitable treatment for the commerce of other nations. Similar provisions with respect to the protection of racial and religious minorities in Poland were included in the Treaty of Versailles. The importance of these provisions is not only that they are definite restrictions upon the sovereignty of the states in question, which do not, however, affect their international personality, but that they constitute precedents for the assumption by the League of Nations of a right to regulate domestic conditions within new states when such conditions might be likely to give rise to disputes with neighboring states.

The "right of self-determination" may now be said to have obtained a foothold among the principles of international law. International law of 1914 recognized a new state only when, after revolting against the larger state of which it formed a part, it succeeded in maintaining its *de facto* independence. The treaties of peace with Germany, Austria, Hungary and Turkey create new states by the fiat of the league; but since the creative decree has only been pronounced in favor of the subject nationalities of the defeated powers, it cannot be said that there has been any very definite recognition of self-determination as a fundamental principle of international law. Political and economic conditions still qualify the application of the principle in a given case, and there has been no relinquishment by the powers

of their right to treat as a domestic issue the question of self-determination when arising within their borders. Moreover, it is still unsettled what is to be the proper basis or unit of self-determination. The "well-defined national aspirations" which President Wilson believed should be accorded satisfaction are in most cases associated with ill-defined geographical limits where the point of contact begins with other nationalities. The decisions of the several treaties of peace appear likely in a number of cases to give rise to disputes for many years to come. In the interest of maintaining the historical boundaries of Bohemia a large body of Germans was included within the western boundary of Czechoslovakia. Italy was given a strategic boundary in the Tyrol which embraces a dominant Austrian population. Sea-ports along the Adriatic have been cut off from the hinterland. Poland has been given a boundary which drives a wedge between East and West Prussia. The plebiscite taken by zones in Schleswig-Holstein represents, perhaps, the most equitable adjustment of the difficulty of mixed populations. It is evident that there can be no offhand or general solution of the problem of nationalities on the basis of boundary lines, and that only in the protection by constitutional provision of the rights of minorities can many of the special situations be satisfactorily met.

The provisions contained in the covenant of the league and in the treaties with Germany and with Turkey with respect to the creation of international mandates for the government of backward territories are a marked departure from the precedents of international law. If they may be judged by the principles they enunciate rather than by their present promise of practical results they may be regarded as a reform of the highest importance. Article XXII of the covenant recognizes the existence within the Turkish Empire of certain communities which have reached a stage of development at which they are ready for separate statehood subject to a temporary régime of administrative assistance from a mandatory state. Mandates for Syria and Mesopotamia have been accepted by France and Great Britain, while the senate has refused to give its consent to the President's plea that the mandate for Armenia be accepted by the United States. Unfortunately the abstract issue of administrative assistance to be rendered by the mandatory is complicated by the fact that some of the territories in question have valuable natural resources, so that the possession of a mandate appears to be regarded as the equivalent of a "sphere of influence" within which the mandatory would have special facilities for commercial exploitation.

In addition to these territories which are to be emancipated under the protection of stronger states, there are the former colonies of Germany, some of which are to be administered by a mandatary under a separate form of government and others to be administered as integral portions of the territory of the mandatary. In both cases provision is made in the covenant and in the body of the treaty that the administration shall be conducted under conditions approved by the league, by which equal opportunity for trade will be allowed to all members of the league, and certain abuses, such as the trade in slaves, arms, and liquor, will be prohibited; and the requirement is laid down that the mandatary shall render to the council of the league an annual report in reference to the territory committed to its charge. The value of these provisions, if it is not too much to assume their observance, lies not only in the fact that they attempt to protect the backward peoples of Africa against possible exploitation, but that they introduce a new principle of international responsibility into the relations of nations, in that they recognize that the development of such peoples forms "a sacred trust of civilization." If the league can secure the fulfillment of the promises thus made, a strong impetus will be given to the further development of international administrative law. At the present moment the functions of the permanent mandates commission, which is to receive the reports of the several mandatories, have been outlined and the personnel of the commission is about to be appointed.

A word may be said with respect to the future status of neutralized states. International law of 1914 recognized the status of permanent neutralization imposed upon a small state by a formal guaranty of the great powers. The guaranty operated as a contractual restriction upon the great powers to prevent them in time of war from taking advantage of the strategic position of the small state, and at the same time it placed the small state in the position of being unable to take sides in a conflict between neighboring states. On the other hand the general rules of international law forbade the violation of the territory of all states not parties to a war in progress, so that these latter were likewise immune from attack should they choose to remain neutral. The distinction between the formal contractual guaranty and the protection of the ordinary rules of international law is illustrated in the attitude of Great Britain and of the United States towards the violation of the neutrality of Belgium. Great Britain had no choice but to uphold the treaty of 1839; whereas the United States, although a signatory of the Hague Convention which declared the territory of

neutral states to be inviolable, did not acknowledge any obligation to enforce a mere rule of international law, however applicable to the facts of the case. The distinction only shows the weakness of the sanction of international law in 1914 and the unorganized character of the international community. The covenant of the league puts an end to all special guaranties, and lays down the principle that all states are to be equally protected in their territorial integrity and political independence, and that any nation which undertakes to make war without first resorting to arbitration will be regarded as making war upon the league itself. All states henceforth become neutralized, and the old distinctions between "several" and "collective" guaranties and between neutralized and merely neutral states cease to have a meaning. It is of interest to note that at the opening of the Belgian parliament following the signing of the armistice, King Albert formally repudiated the treaty of 1839 as an infringement upon the independence and full sovereignty of the country.

*Need of Positive Legislation.* Little progress is to be recorded in respect to the most urgent need of international law, namely, the development of a clearer and more comprehensive code of international rights and duties. Several special legislative functions have, however, been conferred upon the council of the league, among them being the determination of plans for the reduction of national armaments and of plans for offsetting the evils of the manufacture, by private enterprise, of munitions and implements of war. Thus far no steps have been taken in the matter of plans for disarmament further than the appointment of a permanent commission which is to draw up recommendations for the council. Unfortunately no general legislative powers have been conferred upon the assembly of the league, but there is no reason why it should not assume such powers subject to the ratification of its conventions by each individual state, as in the case of the agreements reached at the Hague. A number of constructive provisions in regard to international transportation are included in the Treaty of Versailles, but they have been limited in their application to the grant of easements in favor of the allied and associated governments on German railways and waterways and in German ports, instead of being extended to the commercial intercourse of all members of the league. The treaty does, however, make provision for an ultimate grant of reciprocity after five years, unless the league decides to prolong the time. A permanent commission has been created to carry out the special provisions of the treaty; and there is discussion of a world conference

to be called which would work out a plan for a more general enjoyment of international waterways and for the prevention of discriminations in their use in favor of the riparian states. It is clear that the whole subject of economic rights of way, including the use of railways and waterways, freight rates, freight facilities, through traffic, the use of ports, and port dues must sooner or later be regulated by general international agreement if one of the chief sources of international jealousy and bitterness is to be removed.

The most important problem, however, awaiting settlement is the regulation of international commerce in its larger aspects. No one disputes that the trade rivalries of the nations were prominent among the underlying causes of the war, yet there appears to be little intention on the part of governments to formulate a constructive rule of law to meet the situation. Competition for exclusive control over the raw materials of industry continues today as in 1914, the possession of adequate supplies of oil being now the foremost concern of foreign offices. The problem of the terms upon which concessions may be held in foreign countries, and of the rights acquired by a state to protect its citizens in the enjoyment of such concessions still remains unsettled. The principle of the "open door" remains of limited application, although it would appear that it is implicitly included in the provisions of the covenant of the league with regard to the administration of colonial mandates. Preferential tariffs continue to exist between colonies and the mother country. A new basis of discrimination by the United States appears in the recent Jones Merchant Marine Act by which the President is directed to abrogate all treaties with foreign countries which prevent the United States from imposing discriminatory duties or tonnage taxes. Thereafter the interstate commerce commission is to allow preferential import and export rates only when the goods involved are carried on American ships, if available. There is obvious need for an "international commerce act," modeled after, if not so comprehensive as, the Interstate Commerce Act of 1887, which shall undertake to formulate some such regulation of the trade of the nations as will convert the present competition upon unfair terms into a true equality of economic opportunity.

The execution of international law by means of administrative commissions has received a remarkable development as a result of the Treaty of Versailles. Apart from the commissions possessing more general functions, such as the labor, health, disarmament, freedom of transit, mandates, and others, a number of commissions have been

created for the performance of specific administrative duties. The creation by the treaty of Danzig as a free city under the protection of the league called for the appointment of a high commissioner who should administer the city as the agent of the league. The commissioner has been appointed and has drawn up plans for a constituent assembly to be elected by the people, which is to draw up a permanent constitution. Similarly, a governing commission for the Saar valley has been appointed by the council of the league and has already entered upon its functions by the issuance on February 26 of a proclamation notifying the people of their government by the league. A remarkable innovation in international practice is to be found in the establishment of the interallied Rhineland commission which is to be the supreme representative of the allied and associated powers during the military occupation of the Rhine territory. The members of the commission enjoy diplomatic privileges and immunities, and are empowered to issue ordinances having the force of law, whether affecting the army of occupation or the civilian population, in so far as may be necessary to secure the safety of the occupying forces.

More thoroughgoing still in their encroachment upon the sovereignty of Germany are the powers of the reparation commission, which is intrusted with the administration of the reparation provisions of the treaty. The commission, in determining the total reparation bill which Germany is to be required to pay, may require full information with regard to Germany's military operations, her financial situation, and her stocks, current production and productive capacity of raw materials and manufactured articles. This experiment in the administration of a bankrupt state, while undertaken for the specific purpose of securing payment of a debt, cannot but have important indirect results in creating a precedent for the administration of backward countries, such as Morocco, in cases where the object in view is not the punishment of international crime, but the rehabilitation of the state and the prevention both of its exploitation by its creditors and of possible conflicts among the creditors themselves. In the presence of the present threat to Mexico, contained in the report of the subcommittee of the senate committee on foreign affairs, which offers to Mexico the alternative of a new treaty involving the alteration of its constitution and other specific promises, or the policing of its lines of communication by American forces, it may be questioned whether it would not be at once more logical and more conducive to international peace if the League of Nations or the Pan American Union were called



upon to undertake the task of reconstructing the country by the appointment of an international receiver-general.

A further illustration of the possibilities of international administration of undeveloped countries is to be seen in the organization of Great Britain, France, Japan and the United States into a consortium or syndicate of governments for the control of private financial enterprises in China. In accordance with the plan proposed the four signatories of the consortium are to pool all their undeveloped concessions and options. Henceforth no advances of money are to be made to individuals or to private enterprises, but only upon the application of the Chinese central or provincial governments, or corporations guaranteed by them. When loans are made there is to be an equality of opportunity in taking up the respective shares. The agreement, if adhered to, should do much to adjust the rivalries of the past, and to convert what have been exclusive spheres of interest into a free field for the four chief competitors.

*International Judicial Organization.* With respect to the development of international judicial institutions progress has been made to the extent of the appointment, at the meeting of the council of the league on February 11, of an organizing committee which is to draw up plans to be presented to the council for the creation of the permanent court of international justice provided for in Article XIV of the covenant of the league. The committee consists of twelve members, who began their sessions on June 16 at the Peace Palace at the Hague. Although the United States, by reason of its failure to ratify the treaty, is not a member of the league, Mr. Root accepted an appointment as a member of the committee. In making the opening address M. Léon Bourgeois pointed out the difference between arbitration by occasional courts and "judicial settlement" by a permanent court, and explained that the latter was only possible in an organized world. The draft convention of the judicial arbitration court (court of arbitral justice) proposed at the Second Hague Conference, but never brought into operation by the signatory powers, will doubtless form the basis of the discussions of the committee.

With respect to the jurisdiction of the new court it has already been announced by Mr. Root that political questions, as distinct from juridical, will be excluded from the court. Compulsory arbitration of all disputes whatsoever still appears as little feasible as it was in 1914, except on the one point that the covenant of the league requires that its members may not go to war when the council or the assembly shall

have decided unanimously against them. Judging from the dominant position of the great powers in the council of the league it would seem likely that the question of the composition of the permanent court, upon which it was impossible to secure an agreement at the Hague in 1907, will be settled along lines of the composition of the council, representation being given to the five great powers and to four or more other states designated by the assembly of the league.

Apart from the failure of the United States to become a member of the league by ratification of the Treaty of Versailles, the prestige of the league has suffered greatly from its inability to take action in a number of cases which appeared to fall within its jurisdiction. The most serious of these is doubtless the war which Poland has been conducting against Russia. It would appear that on the technical ground that the war is a continuation of the World War and is not a new war the league has decided that it cannot take action in the matter. A more direct case for intervention has, however, been presented to the league in the form of an appeal to the league from Persia for protection against Russia. The appeal has been described as the "first test case" of the value of the league. On June 16 a decision was reached by the council in which action in favor of Persia was postponed until Persia should receive from Russia a reply to a communication of June 12, outlining the concessions Persia wanted Russia to make. Should a satisfactory reply not be received by Persia, the council was ready to receive a second application for intervention. The difficulty in the case is not only that Russia is not a member of the league, but that its present *de facto* government has been outlawed by the powers, so that it has little to lose from its failure to comply with a decision of the league.

## NEWS AND NOTES

### PERSONAL AND MISCELLANEOUS

EDITED BY FREDERIC A. OGG

*University of Wisconsin*

The program for the meeting of the American Political Science Association to be held at Washington, December 28-30, is in process of construction. Sessions are planned on the following subjects: administrative reorganization in the national government; the relation between the executive and legislative branches in the United States; political science materials in the Washington archives and in official publications; problems and policies of international organization; Pan American politics and diplomacy; and political theory. A session on the peace treaties is probable. Round-table conferences are proposed on European politics, constitutional law and municipal finance. There will be the usual joint session for presidential addresses; also the annual business meeting of the association. Professor C. C. Hyde, of Northwestern University, has replaced Dr. Hornbeck on the program committee. The chairman is Professor A. N. Holcombe, of Harvard University.

Professor Henry Jones Ford, of Princeton University, president of the American Political Science Association in 1917-19, has been named by President Wilson as a member of the interstate commerce commission.

Dr. L. S. Rowe of the University of Pennsylvania, who during the war served as assistant secretary of the treasury, has been appointed director-general of the Pan American Union. Dr. Rowe will assume the duties of his new office in September.

Professor Lindsay Rogers, of the University of Virginia, gave two graduate courses on politics at Columbia University during the summer session. He has been granted leave of absence for next year to accept

an appointment as lecturer on government at Harvard University. His courses at Virginia will be in charge of Dr. Bruce Williams, of Johns Hopkins University, as acting adjunct professor of politics. Messrs. Philip M. Payne and E. L. Dyer have been appointed instructors in political science at the University of Virginia.

Dr. Chester Lloyd Jones, formerly secretary-treasurer of the American Political Science Association, has resigned his professorship at the University of Wisconsin. He is at present commercial attaché at the American embassy at Madrid, but has accepted a position with a commercial house having headquarters in New York City.

Professor James W. Garner, of the University of Illinois, gave a course on political theory and another on comparative European government at Stanford University during the recent summer session. After the summer quarter at Stanford he will sail for Europe, to remain throughout the coming academic year.

Dr. Charles H. Cunningham, adjunct professor of business administration and government at the University of Texas, has been granted leave of absence to accept an appointment as commercial attaché for the United States in Mexico.

Mr. Frank M. Stewart, secretary of the bureau of government research at the University of Texas, has been granted leave of absence for next year to continue his studies in Columbia University and in the New York Bureau of Municipal Research.

Professor H. G. James, of the University of Texas, gave courses in political science at the University of Chicago during the summer quarter.

The faculty of the school of government at the University of Texas will be enlarged next year and courses will be added in the field of Latin American government, especially along the lines of constitutions, administrative methods, and political problems. Dr. James will take charge of this work and will offer the courses devoted to this field.

Harrison C. Dale, professor of political science at the University of Wyoming, has been granted partial leave of absence for the first term

of the academic year, 1920-21, to assist Governor Carey in the installation of the Wyoming state budget system. Last summer Professor Dale made an administrative survey of the state institutions required under the budget law.

Mr. C. A. Dykstra, formerly secretary of the Civic League of Cleveland, has entered upon his duties as civic secretary of the Chicago City Club.

Dr. Stanley K. Hornbeck, until recently with the United States tariff commission, has gone to the Far East with a view to making a first-hand study of political and economic conditions.

Mr. R. Granville Campbell, who recently received the doctor's degree at Johns Hopkins University, has been appointed professor of political science at Washington and Lee University.

Dr. Pitman B. Potter, associate in political science at the University of Illinois, has been appointed to an assistant professorship of political science at the University of Wisconsin. Professor Potter received his doctor's degree at Harvard University in 1918.

Mr. Harold R. Bruce, who completed his work for the doctor's degree at the University of Wisconsin this summer, has been appointed to an assistant professorship of political science at Dartmouth College. Dr. Bruce's doctoral dissertation was a comparison of the aims and methods of organized labor in politics in Great Britain and the United States.

Mr. Clarence A. Berdahl, who received the doctor's degree at the University of Illinois in June, has been appointed to an instructorship in that institution. His dissertation dealt with the war powers of the president of the United States. Dr. Berdahl taught at the University of Texas during the second term of the summer session.

Associate Professor John P. Senning, who has been acting chairman of the department of political science and sociology for the past year at the University of Nebraska, has been made chairman. Professors L. E. Aylsworth, H. P. Williams, and J. P. Senning delivered lectures before the citizenship school for women conducted by the extension department of the University of Nebraska in May.

Mr. George B. Noble, who received the doctor's degree at Columbia University in June, has been appointed to an assistant professorship of political science at the University of Nebraska.

Professor Karl F. Geiser, of Oberlin College, gave courses at the Ohio State University during the recent summer session, replacing Professor F. W. Coker, who on account of illness temporarily discontinued teaching. Professor Geiser's work at Oberlin was taken over by Dr. Kenneth W. Colegrove, of Northwestern University.

Miss L. M. Holmes, who for the past two years has held the N. W. Harris fellowship in political science at Northwestern University, has been awarded a thousand dollar teaching fellowship in international law offered by the Carnegie Endowment for International Peace. Miss Holmes will spend the coming year in study at Harvard and Radcliffe.

Mr. Paul M. Cuncannon, of the Princeton graduate school, has been appointed instructor in political science at the University of Wisconsin.

Mr. Thomas F. Carroll, of the Princeton graduate school, has been appointed instructor in political science at Dartmouth College.

Professor Victor J. West will be on leave of absence from Stanford University during the year 1920-21, and is to be associated with the United States Bureau of Efficiency at Washington.

Miss Louise Overacker, research assistant in political science at Stanford University, has been appointed instructor in political science at Vassar College.

Stanford University is introducing a course in problems of citizenship, to be required of all freshmen. The course runs through the year and is to be divided into three parts, dealing respectively with social, political, and economic problems. The authorities of the university consider the new course so important that they are inviting the best men of the faculty in the respective lines to assist in the work.

Professor E. W. Crecraft, of the Municipal University of Akron, is co-operating with the Akron Bureau of Municipal Research. Students in the university are allowed credit for field work, and the arrangement is said to be tantamount to a training school for public service.

Thomas I. Parkinson, professor of legislation in the Columbia University Law School, will resume his academic duties in the fall. Professor Parkinson has resigned the position of senate draftsman to which he was appointed by the Vice-President in March, 1919, upon the creation of the drafting service for the senate and house of representatives. This service was created by Sec. 1303 of the Revenue Act of 1918. During the last session the house appropriation committee reported a bill proposing to repeal the law creating the drafting service, but by a vote of 126 to 11 the house reversed the committee and appropriated the sum of \$40,000 for the use of the service in both houses during the next fiscal year.

The annual conference at Clark University on international affairs was held May 20-22 and was devoted to problems related to Mexico and the Caribbean. The following were among the papers read: "How to Restore Peace in Mexico," by Henry Lane Wilson; "Are the Mexican People Capable of Governing Themselves?" by T. E. Obregon, Mexican minister of finance in 1913; "Common Sense in Foreign Policy," by E. N. Borchard; "Mexican Character in Relation to Environment," by Ellsworth Huntington; "The Mexican People," by Frederick Starr; "The United States and the Nations of the Caribbean," by Jacinto Lopez; "The Caribbean Policy of the United States," by William R. Shepherd; "Educational Cooperation between Latin America and the United States," by John Barrett and Francisco J. Yanes. According to custom, the complete proceedings will be printed.

At the April meeting of the Southwestern Political Science Association the following officers were elected for 1920-21: president, A. P. Wooldridge, of Austin, Texas; first vice-president, George B. Dealey, general manager of the *Dallas News*, Dallas, Texas; second vice-president, Professor F. F. Blachly, of the University of Oklahoma; third vice-president, Professor D. Y. Thomas, of the University of Arkansas; additional members of the executive committee, Professors E. R. Cockrell, of Texas Christian University, and E. T. Miller, of the University of Texas. Mr. C. P. Patterson, of the University of Texas, was reelected secretary-treasurer, and Professor C. G. Haines, of the University of Texas, was made editor of the *Southwestern Political Science Quarterly*. The first number of the *Quarterly* was issued last June. Besides two general articles on the "Meaning and Scope of Political Science" and "Municipal Home Rule in Oklahoma," it

contains an announcement of the purposes of the publication, an account of the first meeting of the Southwestern Political Science Association, the constitution of the association, a department of legislative notes and reviews, a department of news and notes, a number of book reviews, and an English version of the constitution of the republic of Uruguay adopted by popular vote in 1917. A special feature is to be a department devoted to Latin-American affairs, under the editorship of H. G. James.

In the Harris Political Science Prize essay contest, open to undergraduates in the colleges and universities of Illinois, Wisconsin, Minnesota, Iowa and Indiana, the prizes for 1919-20 were awarded as follows: first prize, to Mr. Herbert Lefkowitz, of the University of Minnesota, for his essay entitled "Influence of the World War on Cabinet Government in Great Britain;" second prize, to Mr. Darrell F. Johnson, of the University of Minnesota, for his essay entitled "The National Non-Partisan League in North Dakota."

The subjects for the competition of 1920-21 are as follows:

- (1) Constitution-making in Europe, either from a comparative standpoint, or for a particular state;
- (2) The elements of a Far Eastern policy for the United States;
- (3) International settlements in the Near East, with relation primarily either to European territories or to Asiatic territories;
- (4) Campaign contributions and expenditures, and their regulation;
- (5) The problem of state supervision and control over local administration (a) in a particular state, or (b) with reference to a particular field of government, such as health, public utilities, taxation, accounts, law enforcement, etc.;
- (6) Budget reform (a) in the national government or (b) in a particular state or city;
- (7) Reorganization of county government, with reference to a particular state or county.

Detailed information concerning the contest may be obtained from Professor P. Orman Ray, 106 Harris Hall, Evanston, Illinois.



THE INTERNATIONAL UNION OF ACADEMIES AND THE AMERICAN COUNCIL  
OF LEARNED SOCIETIES DEVOTED TO HUMANISTIC STUDIES<sup>1</sup>

One of the best traditions which have come down to us from the Middle Ages is that of the republic of letters, of the interdependence of learned men and students of all nations, of the free share in the results of research and thought across political boundaries. Whatever be the fate of the effort to establish closer relations among governments, the old bonds among scholars will not be loosened; already there has been a definite response to the need for organized effort in the field of humanistic learning.

Before the war the International Association of Academies, of which the United States was not a member, formed in 1900, met the need for organized coöperation among scholars; but its activities came to an end with the breaking out of the conflict which involved so many of its members. Out of the war has come a new international scientific organization, the International Research Council, formed in 1918, at the call of the Academy of Sciences in Paris. The research councils created in each belligerent state to mobilize scientific thought for war purposes were thus united for mutual help, and after the armistice, the international council, no longer an engine of war, was opened to the scientific academies of the neutral countries. It now holds regular meetings, where the scientists of member countries meet for common study of the questions which interest them all.

The initiative for the formation of a similar organ among those interested in humanistic studies came also from Paris. The Academy of Inscriptions and Belles-Lettres and the Academy of Moral and Political Science called a conference at Paris in May, 1919, at which was formed the Union Academique Internationale (International Union of Academies). Its organization was completed and a constitution adopted at a second meeting of authorized delegates, held also in Paris, in October, 1919, at which eleven countries were represented. The second regular meeting was held in May, 1920. So the new organization is now well established as a focal point for humanistic scholars of the world. The objects of the union were expressed in the first call as follows:

(1) "To establish, maintain, and strengthen among the scholars of the allied and associated states corporate and individual relations which

<sup>1</sup> The constitution of the American Council of Learned Societies was ratified by the American Political Science Association in March, 1920.

shall be sustained, cordial, and efficacious, and which shall, by means of regular correspondence and exchange of communications and by the periodical holding of scientific congresses, make for the advancement of knowledge in the various fields of learning.

(2) "To inaugurate, encourage, or direct those works of research and publication which shall be deemed most useful to the advancement of science and most to require and deserve collective effort."

The constitution as adopted at the October meeting established as the governing body of the union a committee of two delegates from each country, who should hold at least one meeting a year. The committee elects the officers of the union to manage its affairs in the period between sessions, and to supervise the permanent secretariat established at Brussels, the headquarters of the union. New members may be admitted by a three-fourths vote of the delegates, and it is to be hoped that German and Austrian scholarship will soon be represented on the committee. The administrative expenses of the union are met by an equal assessment on its members, which at present amounts to 2000 francs (Belgian) each; but the funds to carry out projects of work are to be raised by the members.

The function of the union is to give these projects the guaranty of careful consideration by a responsible international group of scholars, who will pass not only on the value of the work, but upon the possibilities of its being carried out. The procedure is planned to allow careful consideration. Projects must be submitted to the member societies or academies before being brought up at a meeting of the committee, so that each local body can decide which are of greater interest from its point of view and which it can aid in carrying out, either by providing personnel to do the work, or by securing the necessary financial support. The delegates bring to their committee meeting the opinions of their local groups as to local wishes and possibilities and can select, as a result of the world-wide referendum they represent, those plans for research or publication which not only will be most valuable in their scholarly results, but will also most readily command financial support or for which qualified workers can be best found.

Eleven academies representing humanistic learning or the humanistic side of general academies have joined the union: France, Great Britain, Belgium, the Netherlands, Norway, Denmark, Italy, Greece, Poland, Russia, and Japan. The academy of Sweden "will be glad to join the union when it is possible to invite all the countries to participate in it;" that is, it will join with the German and Austrian academies.

The United States was represented at the first meeting by Professor Charles H. Haskins of Harvard and Professor James T. Shotwell of Columbia, and the coöperation of America was not only desired by the Europeans, but was felt to be a duty, as well as a privilege, by the American scholars to whom the call was communicated. A serious difficulty arose in the United States. There was no legally recognized body of scholars representing the humanistic studies, and corresponding to the academies of European countries. A similar situation arose in Great Britain in 1902, when the scientific men were represented in the International Association of Academies through the Royal Society; but there was no means of getting representation for the other branches of learning. Consequently, the British Academy for the Promotion of Historical, Philosophical, and Philological Studies, usually termed the British Academy, was formed to meet the need, and is now a member of the Union Academique Internationale.

In this country, although there is no national academy, there are active societies in each field of humanistic study—societies, many of them, with a long record of useful work and an acquired right to consideration. Appreciating the actual situation, a peculiarly American device was hit upon to set up a body which could represent this country in the union. Instead of endeavoring to establish an academy composed of a comparatively few men, whose choice would have seemed arbitrary to many of those left out, a federation of the existing societies was effected, and the American Council of Learned Societies devoted to Humanistic Studies, termed for short the American Council, was formed in Boston in September, 1919. Great credit is due Mr. Waldo G. Leland, secretary of the American Historical Association, whose ability and enthusiasm are largely responsible for the successful outcome of the September meeting.

The council is composed of two delegates from each constituent society, who meet at least annually. It elects its own officers and appoints and instructs the American representatives in the international union. Its current expense and the annual assessment paid to the union are covered by a small sum assessed on each member society in proportion to membership. The Institute of International Education, through its director, Dr. Duggan, has generously assumed the clerical expense of the council and has provided it with office accommodations.

The first meeting of the council was held on February 14, 1920, in the rooms of the institute in New York. Eleven societies sent dele-

gates: the American Philosophical Society, the American Academy of Arts and Sciences, the American Antiquarian Society, the American Philological Association, the Archaeological Institute of America, the American Historical Association, the American Economic Association, the American Political Science Association, the American Sociological Society, the American Oriental Society, and the Modern Language Association of America. All these societies are now members of the council. The American Philosophical Association and the Society of International Law were invited to join; the first has postponed discussion until its next meeting, the second decided not to join.

The American Political Science Association was represented by Professor Henry Jones Ford, of Princeton, and Mr. J. P. Chamberlain, of Columbia University. The council elected as its first officers, Professor Charles H. Haskins, of Harvard, chairman; Professor John C. Rolfe, of the University of Pennsylvania, vice-chairman; Professor George M. Whicher, of Hunter College, secretary. These three, and Professor Allen A. Young, of Cornell, and Professor Hiram Bingham, of Yale, constitute the executive committee. Professor James T. Shotwell, of Columbia University, and Mr. William H. Buckler, of Baltimore, were appointed delegates to the May meeting of the international union.

American membership in this union is thus based on recognition of the existing American societies, which include practically all students of subjects coming under the jurisdiction of the international body. The members of the council are not a self-continuing body of scholars more or less arbitrarily selected, but are chosen by the suffrage of their peers in the fields which they represent. This democratic organization has the double advantage of corresponding to our American theory of representation and of resting the support for the international movement on the wide basis of the ten thousand members of the constituent societies, rather than on the forty or one hundred immortals who would constitute an academy.

The moral and social value of the expression of the international solidarity of learning contained in the union needs no argument. The League of Nations is now in being and it is fitting that the international democracy of learning should have an organ through which it can express its desires to the council of the league and can aid that body in settling questions which interest the scholars of the world. Already an international committee of archaeologists has framed regulations in respect to excavations in the territory of the former Turkish Empire,

regulations which will probably be attached to the treaty with Turkey and will be applied by the mandatories who will hold portions of that territory. Under the Ottoman régime, permits to excavate in that archaeological golconda were obtained through national or personal influence, a condition which seriously hampered effective work and caused much resentment. The existence of an active international organ of scholars will be a safeguard against breaches of the regulations, once they are adopted.

Such work, however, is only a small part of the field. Students of political science will be especially interested in the possibilities of joint action in urging governments to a more liberal policy in opening their archives to study; in standardizing reports, especially in respect to labor laws, where the international right of inquiry as to the enforcement of international labor treaties will tend to this end; in securing coöperation in studies of government activities such as budget systems, parliamentary committee systems, in regard to which general information is so abundant, exact knowledge so rare and so hard to acquire, without the coöperation of local students and administrators. When the world was essentially agricultural, problems of political science might have been considered largely local. Now that the world is becoming industrialized, and on a machine basis, even as to farming, problems are increasingly international in scope, as the international regulation by treaty of labor and migratory birds shows, and in the methods applied by local laws in settling them, witness the world-wide spread of workmen's compensation and other forms of social insurance.

Teachers and students of political science recognize the operation of the law of imitation in legislation; they protest only against blind acceptance of foreign institutions or ostrich-like refusal to accept them on the report of more or less biased observance. The international union offers the means of extending and strengthening the work of such groups as the International Association for Labor Legislation and the International Association against Unemployment, and therefore of rendering a great service, not only to international good feeling and learning, but to practical understanding of governmental and legal institutions as they really exist.

J. P. CHAMBERLAIN.

*Columbia University.*

## BOOK REVIEWS

EDITED BY W. B. MUNRO

*Harvard University*

*Law in the Modern State.* By LÉON DUGUIT. Introduction by Harold J. Laski. (New York: B. W. Huebsch. 1919. Pp. xliv, 248.)

During the recent years Professor Duguit has figured conspicuously in the realm of theoretical jurisprudence because of the extent to which his views regarding the sovereignty and personality of the state have differed from those commonly accepted. Considerable portions of Professor Duguit's writings have appeared in English translations. In the volume of the Continental Legal History Series entitled *The Progress of Continental Law in the XIX Century* is included a translation of his *Les Transformations Générales du Droit Privé depuis le Code Napoléon*; in the volume of the Modern Legal Philosophy Series entitled *Modern French Legal Philosophy* are to be found selections from his *L'Etat: Le Droit Objectif et la Loi Positive*; and the November, 1917, issue of the *Harvard Law Review* was devoted exclusively to his study *The Law and the State*. Now, in the volume under review, American readers are presented with a translation by Mr. and Mrs. H. J. Laski of another of Duguit's shorter works.

In all of his works Duguit repeats and stresses the importance of his denial of the state's sovereignty and personality. Of the acuteness of Duguit's analytical powers there can, in general, be no doubt, and it therefore became a matter almost beyond understanding that he should fail to continue to appreciate the real nature of the doctrines which he attacks. By some sort of intellectual idiosyncrasy he seems to have been rendered incapable of distinguishing between the ideas of personality and sovereignty as legal concepts, and, therefore, divorced from questions of actual power, moral right, or political expediency. Failing to make this distinction, or, at least, to keep it clearly and ever present in his mind, he expends his energies in tilting at mere windmills of his own imaginative envisagement. He has a chapter

in the book under notice, entitled "The Eclipse of Sovereignty" in which he never once really proceeds against the principle, found in all modern systems of constitutional jurisprudence, that the judicial tribunals of a country must accept as law the doctrines automatically declared by the political departments of the government, when acting within the spheres allotted to them by the constitution, and that to the constituent or constitution making organ no absolute legal limits may be set.

It may be added, there appears in the writings of Mr. Laski an almost equal confusion of thought. In his introduction to the volume under review, he does indeed admit that Duguit's doctrine is worthless from the juristic point of view, but, apparently, does not see that, this being so, the doctrine is without any value at all; for he (Mr. Laski) goes on to emphasize the political importance of Duguit's denial of the state's sovereignty. This political importance, however, can only be deemed arguable if it be frankly admitted that Duguit is attacking not the sovereignty of the state as a legal or constitutional proposition, but only the moral justification or political expediency of certain of its acts.

As for the denial of the personality of the state, Duguit is here again controlled by the desire to avoid ascribing inherent or absolute powers and interests to the state,—a result which he seems to think follows from predicating juristic personality of the state. Curiously enough, this denial of the state's personality brings Duguit into company with the school of writers represented by Gierke in Germany, and Maitland and Figgis in England, who assert the "reality" of the personality of corporations, and deny that this personality is a mere figment of the jurist's brain. Figgis was interested in the idea because he thought that thus "reality" could be asserted of the personality of corporations other than the state, and especially because, as thus conceived, the Anglican Church might be given a status that would endow it with original rights and powers, and therefore, within its proper sphere, be placed upon a plane equally as high as that of the state itself. This idea has also been attractive to the so-called political pluralists, among whom Mr. Laski may be included. To these pluralists it seems advantageous either to deny the personality of the state, as is done by Duguit, or, by taking the other extreme, to exalt its personality into the realm of reality but at the same time to assert, that, in this respect, other corporate institutions, whether churches, trade-unions, or functional organizations, have a real personality that should be respected.

In chapters following the one entitled "The Eclipse of Sovereignty," Duguit discusses public service, statutes, administrative acts, and state responsibility. It is not possible, however, within the limits of this review, to discuss the points attempted to be made, and frankly it is the reviewer's opinion that they are scarcely worth discussing, so barren are the results. Perhaps, however, it is but fair to the author to quote the following paragraph in which he sums up his conclusions:

"In public law we no longer believe that behind those who hold office there is a collective personal and sovereign substance of which they are only agents or organs. In government we see only those who exercise the preponderant force and on whom, in consequence, there is incumbent the duty of fulfilling a certain social function. It is the business of government to organize certain services, to assume their continuity, and control their operation. Public law is thus no longer the body of rules regulating the sovereign state with its subjects; it is rather the body of rules inherently necessary to the organization and management of certain services. Statute is no longer the covenant of the sovereign state; it is the organic rule of a service or body of men. An administrative act is no longer the act of an official who gives commands or of a public servant who fulfills a command; it is always an act made in view of the rule of the public service. The problems such acts involve are always submitted to the judgment of the same courts. If the act violates a statute every affected person can demand its annulment, not as a subjective right but in the name of the legality that has been violated. . . . Thus public law, like private law, is coming to be interpreted realistically and socially. Realistically, in its denial of a personal substance behind the actual appearance. . . . It is a social conception, in that public law no longer has as its object the regulation of the conflicts that arise between the subjective right of the individual and the subjective right of a personified State; it simply aims at organizing the achievement of the social function of government."

To those to whom conclusions such as these appear either true or valuable, the book is recommended. The translation appears to be well done.

W. W. WILLOUGHBY.

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*The Degradation of the Democratic Dogma.* By HENRY ADAMS.  
(New York: The Macmillan Company. 1919. Pp. 311.)

The complacent optimism of the last half century has been derived in no small part from the Darwinian implication that the vital powers of man "have risen from lower to higher by the spontaneous struggle of the organism for life" (p. 153). Upon this hypothesis, it has been easy to erect the dogma of indefinite progress toward betterment.

In his "Letter to American Teachers of History," which was privately circulated in 1910 and which makes up more than a third of the present volume, the late Henry Adams sought to beguile the attention of sociologists and historians from their fetic of evolution to a momentary contemplation of the second law of thermodynamics and some of its implications.

In order that work may be done energy must flow from higher to lower levels, as water does work when falling to sea level. The second law of thermodynamics, announced by Thomson—later Lord Kelvin—in 1852, points out in effect that all of nature's energies are slowly converting themselves into heat and vanishing into space, until at last nothing will be left except the dead ocean of energy at its lowest possible level and incapable of doing any work whatever (p. 145). In short, the universe is running down.

Adams has amplified his argument from the pages of astronomers, geologists, physicists, biologists, even psychologists and historians, until it would be a hardy or unveracious optimism that would not confess a qualm from its perusal. The sun is cooling, or what is more dismaying, maintains its heat only by cataclysmic condensations, and may be getting ready for one of these at this moment. Nor does the line which divides the organic from the inorganic arrest the universal process of the "degradation of energy" by its dissipation. The animal world expends the energy which the vegetable world draws from the sun by restoring it in the form of heat, which is straightway dissipated into cosmic space. True, with man there enters a new force, thought; but can thought reverse the dissipation of solar energy? As a matter of fact, man, though a late comer in a universe already well on the way to bankruptcy, has proved himself a most reckless spendthrift of the hoarded energies of eons. Besides, what is the significance of the appearance of thought regarded simply as a manifestation of vital energy? "All organisms," Mr. Adams answers, "would tend to develop nervous systems when dynamically ill-nour-

ished," so that "thought appears in nature as an arrested—in other words as a degraded—physical action" (pp. 242–243).

"History," says Mr. Adams, "can be written in one sense just as easily as in another." What vision of the historical process does the degradationist point of view yield? Mr. Adams's answer also hints another of his interests: "According to our western standards, the most intense phase of human energy occurred in the form of religious and artistic emotion, perhaps in the Crusades and Gothic churches, but since then, though vastly increased in apparent mass, human energy has lost intensity and continues to lose it with accelerated rapidity, as the Church proves. Organized in society, as a volume, it becomes a multiplied number of enfeebled units, on which, like the eye in insects, reason acts as an enormously multiplied lens; converging nature's lines of will, and taking direction from them, but adding nothing of its own" (p. 229).

From the same point of view also he quotes the following passage from Le Bon's volume on *Crowds*: "That which formed a people, a unity, a block, ends by becoming an agglomeration of individuals without cohesion, still held together for a time by its traditions and institutions. This is the phase when men, divided by their interests and aspirations, but no longer knowing how to govern themselves, ask to be directed in their smallest acts; and when the state exercises its absorbing influence. With the definitive loss of the old ideal, the race ends by entirely losing its soul; it becomes nothing more than a dust of isolated individuals, and returns to what it was at the start—a crowd" (p. 252). To the same effect is his approval of Eduard Meyer's dictum that "the whole mental development of mankind has, for its preliminary assumption, the existence of separate social groups" (p. 259). In a word, individualism has spelt dissipation of energy, degradation.

It is at this point that Mr. Brooks Adams takes up the story in his somewhat diverting pages on the "Heritage of Henry Adams" (pp. 1–122). The question he poses is, where lay the responsibility for the defeat of John Quincy Adams by Jackson in 1829? J. Q. Adams himself clearly held God responsible and would have made no bones about saying so had he not been deterred by his respect for his mother's feelings. Mr. Brooks Adams, however, with his brother's researches before him, now feels that it was the second law of thermodynamics which was to blame. So the decline of the Adams family is given its necessary cosmic setting.

Readers of this volume are advised to omit the essay at the end, entitled "The Rule of Phase Applied to History." Henry Adams had all the virtues of the great amateur—penetration, aloofness, style. It is sad to record that in the end he did not escape the pitfall of most amateurs. He began taking himself seriously, and that as a prophet!

EDWARD S. CORWIN.

*Princeton University.*

*The Defensor Pacis of Marsiglio of Padua.* By EPHRAIM EMERTON. (Harvard Theological Studies, Volume VIII. Cambridge: Harvard University Press. Pp. ii, 81.)

Professor Emerton has, within the compass of some eighty odd pages, given us the best extended summary in English of the political and ecclesiastical theories of Marsiglio of Padua. To the task which the author set for himself he brought a lifetime study of history, particularly along theological lines, and this has enabled him to make those frequent comparisons and illustrations which others less well schooled would find themselves unable to do. The pleasing style in which the study is written interests the reader in a subject which most scholars make dry and uninteresting. No excuse now ought to exist to justify the author's statement that "the name of Marsiglio is unknown to most persons outside the narrow circle of students of political theory."

Those students of the political theories and issues of our day, who seem to feel that all thought about the state that is worthy of consideration is to be studied only in works of the last half century, or perhaps a century earlier, would do well to get a copy of this small book, and learn what a fourteenth century Italian had to say about the powers of the people, their rulers, and relations to each other. To historians, who feel that the weighing of historical evidence is a nineteenth century invention, it will be of interest to see how such subjects as the Papal Supremacy, the Donation of Constantine, and others, are dealt with in an age when scientific historians were not supposed to exist.

It is not to be expected that within the confines of so small a volume every possible misunderstanding of the subject could be provided against. For example, there is an implication (p. 20) that Marsiglio disappeared from the scene of action much earlier than he actually did. Even Valois concedes that he wrote a tract on divorce in 1342,

and that he may have written at least the last passage of his *Defensor Pacis Minor* in the same year. Marsiglio's "medical training" is mentioned rather abruptly (p. 28), and the reader given no earlier indication that he was a physician.

On page 39 is to be found an extremely clever piece of linguistic work which has revealed the meaning of those hitherto puzzling words "*alto passu.*"

JAMES SULLIVAN.

*New York State Historian.*

*American Democracy versus Prussian Marxism. A Study in the Nature and Results of Purposive or Beneficial Government.* By CLARENCE F. BIRDSEYE. (New York: Fleming H. Revell Company. Pp. 371.)

In this compact little volume, rich in well selected facts and information throughout, the author has performed a useful service. The conception of socialism or of Marxism as a system of tyranny, as Bebel, Hyndman and their ilk aver, is not new; this new laurel for Prussianism is somewhat novel.

The liberal aspect of democracy in respect to many types of action is familiar. The idea, however, of the reach of democracy in allowing to the individual the basic right to own and operate in industry, compared to the Marxian tyranny that denies this basic right, attracts attention. Mr. Birdseye further contrasts Bolshevism, Spartacism and the I. W. W., "the legitimate brats of Prussian Marxism," with the other "members of the trinity, Prussian militarism and Prussian commercialism." The latter are at least orderly, impartial to all classes and prosperous. Marxism as operating in Russia offers none of these. In sharp contrast to these two systems stands American constructive, purposive democracy. The author seizes strong ground in stating that "Marxism like democracy has laws of life and growth" and will develop according to type. The greater part of the volume is occupied in tracing the practical results of American purposive government leading to the general welfare. Two chapters briefly relate Marxian methods to Prussian methods of coercion and terrorism.

In chapters eight to nineteen the actual achievements in welfare work and public control are set forth illustrative of the value of the guiding and stimulating influences of purposive government. Chapters twenty and twenty-one emphasize the need of reasonable restraint

on industry by public regulatory agencies. The reverse side is shown in chapter twenty-one, where the checks operating on government are discussed. Several chapters are devoted to those changes whereby democratic institutions reflect the altered conditions of social and economic life. Attention might be called to the rather meager space devoted to "Prussian Marxism," but since, as Hilquit says, there never has been any socialism of Marxian or any other type, more words were scarcely necessary. Mr. Birdseye has also no doubt followed correct pedagogy in stressing the positive and leaving the negative side to shift for itself. The book should be highly useful in the comparative study of institutions.

W. B. GUTHRIE.

*College of the City of New York.*

*Liberalism in America. Its Origin, Its Temporary Collapse, Its Future.* By HAROLD STEARNS. (New York: Boni and Liveright, Inc. 1919. Pp. x, 232.)

This volume comprises a general discussion of the nature and characteristics of Liberalism, a brief sketch of American Liberalism, an account of its "collapse," and finally a forecast of the probable future.

The core of Liberalism, the author believes, is first "respect for the individual and his freedom of conscience and opinion," and second "tolerance, belief in real freedom of speech and expression." Down to 1914, says Mr. Stearns, American Liberalism had suffered severely from race intolerance exhibited toward the colored man, and from what he calls "perverted moralism" in the form of the prohibition of the sale of intoxicating liquors. But on the other hand, America's traditional hatred of all forms of servility and our practical and straightforward temperament had tended to drive us forward in spite of these factors.

With the war, he believes, Liberalism broke down before the onrush of military conditions. The conscription is the particular object of his denunciation in this connection, and to this he devotes much energy. But beyond this we did not know why we had gone to war; we were fighting for "something shadowy and unreal." Liberals were either seduced or intimidated and made no effective opposition to the war propaganda. Reason abdicated, he feels, and even pragmatism, which Mr. Stearns particularly mourns, failed to stem the tide. In rapid succession came conscription, espionage laws, liberty loan drives

and the star spangled banner, to Mr. Stearns's intense disgust. The underlying reason was, as he sees it, that our leaders were not genuinely liberal, that the intellectual class became the hired attorney of nationalism.

Indeed, the author's contention is "that the peoples of the world were duped from beginning to end," and he believes that "It is difficult to see exactly what liberal purposes have been accomplished by the resort to arms" (p. 10). From that point of view, he seems to be dissatisfied with the war—with its avowed causes, its conduct and its consequences.

The new leadership, Mr. Stearns believes, will be less demagogic than the old, more disciplined and more intellectual. Personally he does not believe in "Bolshevism or Conservatism or Socialism or any other narrow and highly formulated economic, social or political creed." He will merely oppose violence, preach tolerance and keep out of the thick of the fight. He hopes for social revolution, but it must be brought about without a row, although he considers the prospect extremely doubtful.

In his opening pages Mr. Stearns declares that Liberalism must be or is "urbane, good-natured, non-partisan, detached," but it is unfortunate that he has not adhered to this principle throughout his volume. His plea for tolerance is marked by intolerance, for good-nature with ungenerosity in weighing the motives of others, for nonpartisanship and detachment with evident animus and one-sided advocacy rather than fairness and breadth of vision. Hence the value of the work as a critique of American Liberalism is very seriously impaired for the general reader and the serious student.

C. E. MERRIAM.

*University of Chicago.*

*Is America Worth Saving? Addresses on National Problems and Party Policies.* By NICHOLAS MURRAY BUTLER. (New York: Charles Scribners' Sons. Pp. 390.)

This volume is a collection of twenty-two addresses delivered between December, 1912, and November, 1919. Although written and delivered on diverse occasions and dealing with varied subjects they have as a common theme the "exposition and interpretation of the fundamental principles on which the American government and American society are built." According to this exposition the foundation stone

of our system is the possession of a written constitution—"the frame of the government"—which not only grants powers but also prescribes limits to the use of those powers, and which guarantees to each individual the rights of life, liberty, and the possession of property.

Again and again the advantages of what Lord Bryce called a "rigid constitution" are emphasized. Not merely its stability but its protection against chance majority is extolled. And yet President Butler is not averse to progress. He advocates an easier method of constitutional amendment. He proposed that amendments might be submitted by a majority vote of two successive congresses and ratified by a majority of the states, provided that majority contain a majority of the population (pp. 170-171).

In dealing with social, industrial and economic problems, and in his frequent condemnation of anything resembling socialism, President Butler applies the fundamental doctrine of the possession of rights beyond the power of the government. He holds that "the fundamental purpose of the state is to preserve order, to defend liberty, and to keep open the door of opportunity" (p. 86), but he more frequently stresses the liberty to acquire property than other rights of liberty. He most properly says "a strike by a public servant is a direct assault on the whole community" (p. 92), but gives little light on the problem of how to obtain service from an unwilling laborer; while he quite properly denounces the evils of strikes in our complex industrial system, and the dangers of a strike used for political purposes (pp. 86-89) he is less definite in his proposed remedies.

In dealing with the League of Nations, President Butler insists that it "should be a society of nations, and not a society without nations" (p. 201), and in 1918 he declared that such was in actual existence, composed of the Allies and the United States. He advocates calling into operation the international court of justice urged by the American delegation at the last Hague Conference, the establishment of a single code of international law and a division of the world into administrative areas—Europe, the Americas, and the Orient—each with a modified Monroe Doctrine (p. 147). But he is strongly opposed to any form of international interference with the problems which concern the United States.

It should be remembered that the book is a collection of occasional addresses and does not pretend to offer detailed solutions for all the problems it suggests. It is an interesting discussion of these problems from one who is strongly attached to the Republican party.

EVERETT KIMBALL.

*Smith College.*

*Real Democracy in Operation: The Example of Switzerland.* By FELIX BONJOUR. (New York: F. A. Stokes Company. 1920. Pp. viii, 226.)

Written in a pleasing style and admirably translated, this little book by Felix Bonjour, former president of the Swiss National Council, aims "to describe the mechanism of the democratic institutions peculiar to Switzerland and to explain the effects of those institutions." Accordingly rather more than half of the volume is devoted to a discussion of *Landsgemeinden*, the referendum, and the initiative. Briefer accounts are presented of federalism, elections, communes and churches, compulsory voting, democracy in the army and maintenance of neutrality, and the future of democracy in Switzerland. The appendix contains a short but effective summary of the bolshevist troubles in Switzerland during the latter part of 1918.

A distinctive feature of M. Bonjour's book is the large number of authoritative opinions on Swiss political institutions which he has gathered from many sources. The author's judgment is much more cool than might be inferred from the title of the book. It is entirely free from that strain of panegyric common to so many books on Swiss democracy. With regard to proportional representation M. Bonjour concludes that it has made the task of governments more difficult by compelling them "to be continually negotiating with parties, a troublesome business indeed, but less so here than elsewhere, thanks to popular rights and the fixed duration of ministerial office."

The author's comments on woman suffrage will not be pleasing to our militants, but there can be no doubt that they reflect Swiss opinion accurately. Although a partisan of the referendum, M. Bonjour admits that "there are periods when it is traduced by evil popular instincts, when it comes under the influence of local rivalries, and when it serves as the instrument for the spirit of routine or narrow conservatism or as the tool of demagogues." On the other hand he notes that "it puts an end to acute conflicts between people and governments, and provides one of the safest barriers there can be against revolutionary agitation. Nothing can give greater offense to those anarchist or "bolshevist" sections which wish to establish the rule of active and violent minorities."

ROBERT C BROOKS.

*Swarthmore College.*



*Democracy and the Eastern Question.* By THOMAS F. MILLARD.  
(New York: The Century Company. 1919. Pp. 446, map.)

"The design of this book," declares the author, "is to present the case as it appears to an overwhelming majority of the foreign residents of the Far East." Beginning with "The Issue," of which he says, "Students of politics and conditions in the Far East . . . almost without exception feel that unless that part of the world is somehow relieved from the pressure of the imperial ambitions of Japan, another war, which beyond doubt will involve several of the western powers, including America, is inevitable," Mr. Millard proceeds in twenty well arranged chapters to give what may be described as a documented history and analysis of the major events and tendencies in the international politics of the Far East during the past five years (1914-19), arriving in the final chapter, entitled "The Solution," at a series of constructive suggestions.

More than any of the author's previous works, this book is a structure of exhibits—from all sorts of documents, official and unofficial—set in a mortar of comment and interpretation. Its composition is at once its strength and its weakness. To the serious student it will be immensely useful because it has the documents; to the reader who has only appetite or time for predigested, epigrammatic political information, it will seem a somewhat tough, discouragingly hearty offering. However, nowhere else among books as yet available is there to be found so thorough a study of political developments in the region and in the period of which Mr. Millard here treats. Combining features of an epitome, a compendium, a handbook and a treatise, it is unfortunate that this book has—in common with Mr. Millard's previous contributions—no index.

During the period which this book covers, Mr. Millard lived in China, in the United States, in Paris, and on the highways back and forth. All the time he was extending the number and the variety of his contacts. In his last preceding book he wrote particularly as an American addressing Americans. In this, he has written as a student of world politics addressing all who care or may have occasion to consider the courses which political currents are running. Long since convinced that Japanese imperialism is a menace to world peace, Mr. Millard directs attention to the battle which has just been waged in the West between militarism and democracy. The issue, he contends, is the same in the East. "Born almost exactly at the same

time with modern Germany, modern Japan, in adapting herself to modern civilization, has conformed almost exactly to the German political system, the German thesis of statecraft, the German military organization, the German conception of *welt-politik*, and the German methods of playing that game. Intelligent Japanese do not dispute this. . . .

The book contains four chapters on "China and the War," in which are accounts both of external and of internal affairs, of the twenty-one demands, the Lansing-Ishii notes, of Shantung, of propaganda, and of related subjects; two chapters on "Economic Imperialism;" two on "The Siberian Situation." One of the most illuminating chapters, least controversial and most calculated to stir American thought is that entitled "The Corruption of a Nation." In the course of his discussion of the question "What is the open-door policy in China," Mr. Millard says, "My idea of a real open-door policy . . . would inhibit the method that is coming to be called economic imperialism." He believes in international but not bi-national assistance to China; consortium loans, under international supervision, yes, but "American-Japanese (exclusive) coöperation," not for a moment. He contends for the abolition of "spheres of influence," of foreign leases, of various monopolistic concessions, and of extra-territoriality. He propounds and explains the paradox that "to diminish foreign intervention in China's administrative processes it is first necessary to increase it,"—but by the introduction of international assistance.

"Put succinctly, China's appeal to the democratic nations amounts to a cry to be delivered from the old system of predatory penetration and exploitation . . . and to be allowed, and helped, to work out a peaceful national destiny on democratic lines." The United States, he points out, is under specific obligations to assist, and the United States has a practical interest in the future of China second to that of no other power. "Taking the case of China *in toto*, it presents almost an ideal test to apply to the announced principles of the major nations in prosecuting the war and in making the peace. . . . If China's case does not get sympathetic attention and just treatment by the world, it will not be possible for anyone who knows the realities of international politics hereafter to hear their altruistic professions with any confidence or respect."

STANLEY K. HORNBECK.

Washington, D. C.

*The Truth about China and Japan.* By B. L. PUTNAM WEALE (Bertram Lennox-Simpson). (New York: Dodd, Mead and Co., 1919. Pp. 248—Text, 155; appendices, 93.)

This book originated in a series of articles written in anticipation of the Peace Conference and published in *Asia* early in 1919. "Written primarily to allow the reader to see at a glance what the position really is today in Eastern Asia, and to explain precisely why there should be conflict between China and Japan," it has all the positiveness, self-assurance and readability which habitually characterize Putnam Weale's works. Master of condensation, generalization, and epigrammatic presentation, Weale no longer purveys detail; he has produced in the course of the past twenty years eight serious volumes on Far Eastern politics; he may be assumed to know his subject; and he apparently credits his readers with some knowledge of some parts of it.

A hundred word preface wherein the author declares ". . . Japan has a double policy, one policy for the East and another for the West; . . . she uses military power and secret loans to advance the first, and diplomacy and publicity the second; and . . . this intricate matter can be understood only by exploring the history of the remote past," gives the key to the "General Introduction" (Chapter I) in which he outlines in striking splashes of black and white the historical conflicts and the fundamental differences between the Chinese and the Japanese races and establishes the *motif* in Japan's China policy. In Chapters II, III and IV he indicates what in his opinion are the outstanding Far Eastern problems and what solutions should be given them.

Chapter IV on "The Problem of Peking," is perhaps now the most important. It begins with a comparison and a contrasting of the problems of China and of Turkey, and it concludes with the statement that "the problem of Peking should be made the problem of Europe and America. . . ." Among other things, Weale pays his respects in most uncomplimentary terms to "Peking diplomacy;" he pleads for a "real Chinese service of the national debt;" he declares in reference to railways: "Centralized control must be brought to China—with every railway on Chinese soil controlled from Peking;" and he contends that foreign garrisons should be withdrawn. In Chapter V, he raises a number of questions to which Japan would find it difficult to give satisfactory answers. Like Mr. Millard, he considers Japan another Germany, particularly because in the determina-

tion of policy the military is more powerful than the civil authority. It is the ambition of individuals, not the urge of popular and national necessity, that motivates Japan's incursions on the Continent. Korea, Manchuria and Shantung have the increases of their indigenous populations to accommodate; "it is not true that these regions are necessary for the overspill of the Japanese population." The problem growing out of Manchuria and Shantung "is a world problem which has to be faced and solved or else there will be a fresh world disaster."

In reading Weale it should always be remembered that he was favorably and sympathetically disposed toward Japan until after the break in that country's policy which followed the conclusion of the Portsmouth treaty, since which time he has become gradually more and more emphatic in his denunciation of Japanese policies and methods.

STANLEY K. HORNBECK.

*Washington, D. C.*

*Korea's Fight for Freedom.* By F. A. McKENZIE. (New York: Fleming H. Revell Company. Pp. 320.)

It is twelve years since Mr. McKenzie published his *Tragedy of Korea*, which contained some highly interesting sketches of the disturbances in Korea following the first encroachments of the Japanese upon the peninsula after the Russo-Japanese war. The present book is much more carefully organized than its predecessor. It contains a reasonably complete summary of modern Korean history, from the American-Korean treaty in 1882 till 1919, including four chapters on the "independence movement" of 1919 and the harsh measures taken by the Japanese to suppress the so-called "insurrection." The book concludes by suggesting a policy to be adopted by the Christian nations of the world, especially America, a policy of protest against the reign of terror which the Japanese military party has initiated in Korea. The author sees in the future, unless the Japanese can be brought to their senses by such a protest, a growing unrest in the Far East among Japan's subject races which will culminate in a great war in the Pacific, into which America will inevitably be drawn.

This book deserves a wide reading. It breathes a real humanitarian interest in the present unhappy fate of over ten million people; and on its constructive side suggests a way out of a Far Eastern situation full of dangers for the American people.

W. W. McLAREN.

*Williams College.*

*International Waterways.* By PAUL MORGAN OGILVIE, M.A.  
(New York: The Macmillan Company. Pp. 424.)

This volume is divided into two parts differing widely in purpose and content. The only portion of the work that is of interest to the educated public is contained in Part I, which (in eight chapters covering 171 pages) presents a general survey of the "Evolution of the Principle of International Waterways."

The remainder of the book, consisting of 253 pages (including a good index), is entitled "A Reference Manual to the Treaties, Conventions, Laws and Other Fundamental Acts governing the International Use of Inland Waterways."

Although the main title, "International Waterways," is sufficiently broad to include anything relating to the subject, the reviewer confesses to a certain disappointment in finding but one chapter devoted to "The Freedom of Navigation on Inland Waterways." In its emphasis upon the importance of the adoption of the principle of free navigation of inland waterways at the Congress of Vienna, the preface had led him to expect a more extended discussion of this subject, whether from the standpoint of general principles or in its historical aspects. However, in a subsequent treatise concerning "International Rights on Inland Navigable Waterways" we are promised "a systematic examination of physical and political conditions warranting universal navigation on inland waters and consideration of the ancillary uses which appertain to the riparian states."

The bulk of the reading matter contained in this volume relates to the much discussed subjects of the "freedom and sovereignty" of the seas treated mainly in their historical aspects. Though the topic is well-worn, there is still room both for general treatises or for particular researches and investigations. But the book under review hardly fits into either category, though it contains much valuable information and a number of keen interpretative observations. Such, for example, is the distinction between sea power and dominion on the sea on page 108.

In a work which is evidently intended to serve as a sort of introduction to a subsequent treatise on the "Free Navigation of Inland Waterways," it seems somewhat incongruous to devote so much space to the maritime enterprises of the Phoenicians and the Carthagenians, the navigation laws of the Greeks and the Romans, the so-called Rhodian Law (of whose actual content we are in almost complete ignorance), or the codes of maritime laws in the Middle Ages, however important in

themselves. Even the navigation laws of Babylon are not wholly overlooked.

It is doubtless well to be retold the story of the discoveries and explorations of Columbus and his successors, of the rise and fall of Venetian sea power, of the outrageous claims of Spain and Portugal to the sovereignty of the seas based on Papal bulls, and of the commercial and naval rivalries of the Netherlands, Great Britain and France. But these stories have been retold over and over again and in much more attractive form than here presented. Of these matters our author has told us either too much or too little, and the occasional interpretive light thrown upon these events hardly justifies their retelling. It should, however, be pointed out that Chapter VII contains some subject matter not readily accessible elsewhere than in this volume relating to the laws of registry of various countries; and also that Chapter VIII contains some valuable information and shrewd observations on the freedom of navigation on inland waterways.

The Reference Manual, or Part II, should prove extremely useful to students of the law of inland waterways. It includes lists, alphabetically and chronologically arranged, of the international inland and boundary waterways of the world by continental divisions.

Under each river, lake, or canal thus listed are full references to "conventional arrangements and laws regulating the enjoyment of the ancillary uses,—notably participation in the fluvial and lacustrine fisheries and the diversion of waters for power, irrigation, and the maintenance of canals,—together with the agreements governing navigation." The preparation of these lists must have involved an enormous amount of labor.

AMOS F. HERSHEY.

*University of Indiana.*

*Socialism versus Civilization.* By BORIS L. BRASOL. With introduction by Professor T. N. Carver. (New York: Charles Scribners' Sons. Pp. xxiv, 289.)

*Socialism in Thought and Action.* By HARRY W. LAIDLER. (New York: The Macmillan Company. Pp. xviii, 546.)

These two recent books study socialism from two different points of view and are valuable supplementary volumes. The first is a critique of Marxian Socialism with an evident animus. Sweeping

generalizations abound with here and there such loose statements as the following: "Land and natural resources, such as minerals, electricity, air, water-power, etc., have a definite economic value and also a definite market price no matter whether labor has or has not been applied to them" (p. 62); "This brings us back to the true American conception of equality, which for centuries has proved to be sound, namely, to the *equality of opportunity*. Every citizen may become President. Every citizen may become wealthy" (p. 75). With this author socialism always means socialism of the left, or the radical type.

In the second book, by the secretary of the Intercollegiate Socialist Society, is a scholarly presentation of the socialistic indictment of modern society; of socialist theory; of the socialist commonwealth as outlined by various and sometimes opposing schools of thought; of guild socialism and syndicalism. Tendencies toward socialism are sketched and objections discussed. Part II is given to a historical presentation of the socialist movement with a sketch of developments in various countries since 1914.

The contrary viewpoints of these two books is illustrated by the following: Brasol says that Socialism aims at the abolition of private property, the extermination of the capitalistic class, the abolition of the "bourgeois family," the abolition of nationalism and religion. He holds that socialism advocates the forcible and violent overthrow of the existing social order (p. 2). Laidler quotes abundantly to the effect that a large school of socialists do not believe in the abolition of private property (p. 124); that the official attitude of socialists toward religion is that of neutrality (pp. 154-159); that the socialist movement as such has never officially taken any stand concerning the family, but that multitudes of adherents believe that socialism would strengthen the monogamic system (p. 160); that a large wing of socialists are against the use of violent methods in securing their objective (pp. 164-169).

Thus while Brasol's treatise is a valuable criticism of radical socialism, it fails to meet in a convincing way, the issue as raised by Laidler, Spargo, Vandervelde, Rauschenbusch and others, although the constructive proposals given in the last chapter might to some extent at least mitigate the admitted evils of the present system. His suggestion concerning a national institute of production is especially worthy of consideration.

LUCIUS M BRISTOL.

*University of West Virginia.*

*The Unsolved Riddle of Social Justice.* By STEPHEN LEACOCK.  
(New York: John Lane Company. Pp. 152.)

In this little book Dr. Leacock has essayed almost as great a task as the young Scottish probationer who announced that the theme of his sermon would be the Universe, God and Man, and that he would give ten minutes to each head. In some thirty thousand words Dr. Leacock states the social problem, expounds and criticizes the practice of individualism and its theoretical interpretation in the classical economics, condemns the alternative that socialism offers, and expounds a *via media*. Yet in the flood of special treatises there is much to be said for such an endeavor to see the problem whole and from a single viewpoint.

The first chapter restates the paradox of progress and poverty, given fresh point by the war's revelation of peace time superfluities, and of the tremendous slack that could be taken up in emergency. Then follows an analysis of the economic theory which the classical school devised to explain and defend the individualism on which our present society rests. The analysis is clear and coherent but perhaps unduly simplified; a defender of the old economists would ask for proof of the assumption that they taught that every factor in production got out what it put in, and for a fuller analysis of the meaning of cost in the equation between cost of production and value. In a later chapter the author discusses the bearing of monopoly factors and bargaining power on prices and wages. The unworkability of socialism as an alternative is demonstrated by a criticism of Bellamy's *Looking Backward* which is certainly conclusive, though most readers would prefer to have the author's views on Cole, or Smillie, or Lenin.

In conclusion, Dr. Leacock sets out his own program of individualism modified by social control, with equality of opportunity through education, state provision of employment—hardly consistent with the previous denunciation of bureaucratic futility—social insurance, and legislative regulation of the conditions of employment, as in the reduction of working hours below the intolerable eight a day now prevalent.

As would be expected, Dr. Leacock writes with great clarity and force. While the limits of the volume do not permit detailed treatment of any of the topics taken up, the reader will find every page suggestive and will be thankful for a chance to see the woods instead of the trees.

O. D. SKELTON.

Queen's University, Kingston, Canada.



*Italian Emigration of our Times.* By ROBERT F. FOERSTER.  
(Cambridge: Harvard University Press. 1919. Pp. xv, 556.)

Students of immigration and population problems are placed under a great debt to Professor Foerster for the preparation of this volume. Unlike most American writers on immigration, Professor Foerster deals with his subject in its larger aspects and relationships. Only four chapters (91 pages) of his book are devoted to the special problems of the Italian immigrant in the United States, and these are the least valuable and in many ways the least satisfactory chapters of the whole book. This latter statement is not made in the spirit of criticism, for the literature of this aspect of the subject is so abundant and so accessible that students may easily digest and interpret it for themselves. Nine other chapters of Professor Foerster's book deal with the subject of Italian emigration to other countries. Especially valuable are the four chapters (97 pages) dealing with the Italian immigrants in the Argentine and Brazil, for these chapters in the history of Italian emigration are full of interest to those who would understand the Italian in the United States.

But the especial importance of Professor Foerster's work is the careful analysis of the causes of emigration, of the effect of this movement on the Italian nation, and of its probable future,—for the future of Italian emigration can be forecast only as a result of such an investigation of emigration at its source as Professor Foerster has made. As a result of his searching study of the Italian state papers, such as the *Inchiesta Agraria*, the *Inchiesta Parlamentare*, and the *Bolletino dell'Emigrazione*, and of his wide acquaintance with the other Italian literature of his subject, Professor Foerster has presented a scholarly and interesting account of the emigration movement properly set against its Italian background.

Italy has been, as Professor Foerster points out, one of the few great emigrating nations. In South Italy, emigration has been "well nigh expulsion; it has been exodus, in the sense of depopulation; it has been characteristically permanent." The picture of the Italian peasant roused from an "age-long lethargy" to flee from the profound economic disorders, the social maladjustments and the extremities of poverty of his native country is a thrilling story, and it is a story that must be studied by those who wish to understand the Italian peasant in his efforts to adapt himself to the complex social and economic life in his new environment.

As regards the mentality and character of the emigrants who return to Italy, opposing views are presented (pp. 458-459). Nitti's opinion "that emigration is a distribution of scholarships" and that it "is not possible to measure the gains in knowledge nor the inferences from experience that emigrants bring back. They have seen the world and lived in it and have grown indefinably in stature; something that has been dormant has come to awakening; where blankness was, positive wisdom has surged forth"—may be contrasted with a statement by Professor Bordiga in his report on Campania: "It must be confessed that the great majority of the emigrants depart illiterate and return so, and at home have no influence on the spirit of the country, the course of public affairs, and so forth."

Two other valuable features of the volume should be noted: the heroic struggle with the emigration and immigration statistics of the Italian and other governments from which Professor Foerster emerges with as much success as may be had in this baffling field; and his valuable detailed account of the work carried on by the office of the commissioner-general of emigration in Italy and the corresponding emigration council. Here Italy has initiated a unique and valuable social experiment, the results of which may now, thanks to Professor Foerster, be more widely known and carefully studied.

EDITH ABBOTT.

*University of Chicago.*

*Our Italian Fellow Citizens.* By FRANCIS E. CLARK. (Boston: Small, Maynard and Company, 1919. Pp. ix, 217.)

It is a pity that a book prompted by such good spirit as this should be woven together of such thin tissue. The title is misleading, for nearly the whole volume treats of Italy and Italians, with slight reference even to emigration, not to speak of "fellow citizens"—unless the character of the last can be said to be made clear by explicit eulogy of Marconi and denunciation of d'Annunzio. The attractive illustrations are mainly unrelated to either title or text—one is a picture of "Lake Stresa," which does not exist. A pilgrimage to Benevento discovers the fact that this capital city is "in Foggia," where it has doubtless been since Baltimore became a city in New York. Yet even such grotesque errors are probably to be expected. The author's familiarity with the Italian language—there is plenty of support for the guess—does not go beyond the phrase-book. Writing in the year 1919, he

draws frequently for his material upon King and Okey's *Italy Today*, published 1901, even for authority for "pre-war" wage statistics. Such conclusions as he reaches have generally little relation with what has gone before, just as what has gone before has little relation with the book's announced themes. Actually half the space of a chapter on "The Italian of the North" is given to the Waldensians, who might have been omitted altogether, and a chapter on "The Italian of the South" contains little save casual observations made on a railway excursion to Benevento and a short way beyond. In the circumstances, nothing would be gained by expatiating here on the book's contents.

ROBERT F. FOERSTER.

*Harvard University.*

*The Decline of Aristocracy in the Politics of New York.* By DIXON RYAN FOX. (New York: Longmans, Green and Company. Pp. xiii, 460.)

This valuable monograph gives a detailed account of the gradual transfer of power from a narrowly limited class of freeholders to an electorate comprehending all the male citizenship, with reference to the party groupings that accompanied the process and shaped its phases. The work is based upon primary sources and is a monument of extensive research and minute investigation. In effect, it collects the particulars of the political history of New York from 1800 to 1840. It was a period that was rich in party developments. Federalists, Jeffersonian Republicans, Jacksonian Democrats, Whigs, Locofocos and Antimasons appeared upon the scene. Their composition, aims and leadership are described, giving so full a view of party struggles, that at times one can hardly see the wood for the trees. The work has great merits, principally those resulting from diligence in collecting materials and skill in arranging them. A feature that lends interest to the narrative is the vivid personal characterization with which the author from time to time relieves what keeps tending to become a monotonous record of faction wrangling.

HENRY JONES FORD.

*Princeton University.*

*Public Opinion in Philadelphia, 1789-1801.* By MARGARET WOODBURY. (Northampton, Mass., Smith College Studies in History. Pp. 138.)

In this thesis Dr. Woodbury has given a careful study of the capital of the nation at the time of the first sharp party division in national affairs and when Philadelphia had more and better newspapers than any other city in the country. Not the least interesting and important part is the conclusion in which in three pages we have an admirable summing up giving a clear view of the situation. The influence of the work of Professor McMaster is clearly discernible and we have an intelligent application of the methods of research and presentation which have made his volumes such interesting and valuable contributions to a knowledge of the American people and their opinions in current affairs. It is to be hoped that this will be the forerunner of a series of such intimate studies of local views concerning important eras and developments. The chief sources of the study are the newspapers and the pamphlets of the day. Alexander Hamilton naturally fills a large part of the well drawn picture.

CLINTON ROGERS WOODRUFF.

*Philadelphia.*

*The Street Surface Railway Franchises of New York City.* By HARRY JAMES CARMAN, Ph.D. (New York: Longmans, Green and Company. 1919. Pp. 248.)

This monograph traces the franchise history of the street surface railways of Manhattan Island. Seven hundred twenty-six railway companies have been organized to operate steam, surface, elevated and subway lines within the present limits of greater New York. Over four hundred of these are now extinct, about two hundred others have lost their identity, and many others are operating under a lease or agreement. This study is limited to those companies whose lines were consolidated to form the present street railway systems on Manhattan Island.

The history covers street railway grants under the following periods: previous to 1850, 1850-60, 1860-75, 1875-84, 1884-97. There are also special chapters on "The Fight for Broadway" (1852-84), on "The Era of Consolidation," and on "Franchise Grants under the Charter of Greater New York." A half dozen pages are devoted to an inclusive bibliography.

The study is based on a thorough search of sources and is a creditable doctor's thesis. It makes available to the student in detail the historical background of many of the present street railway difficulties.

The author deducts the following conclusions:

1. It can scarcely be said that New York City has ever had a scientific franchise policy; rather it has been blindly groping to evolve such a policy. Until the creation of the Greater City, the franchise-granting body, whether common council or state legislature, awarded franchises to those individuals or corporations offering the greatest monetary inducement or exercising the greatest political influence.

2. In making franchise grants, the public was utterly disregarded. Ordinances were rushed through with practically no opportunity for publicity or careful consideration.

3. The executives, both state and municipal, by their veto power made a greater effort to protect the interests of the public than did the legislative bodies.

4. The majority of the grants were given in perpetuity, were exclusive or monopolistic in character, and invariably brought little revenue to the city.

5. The franchise grants or contracts were loosely drawn and the conditions embodied therein were trivial in character; no provision was made for financial regulation.

6. Consolidation of the independent lines was accompanied by over-capitalization, high rentals, and stock-jobbing.

These observations force us to conclude that today, with the awakened interest in public affairs, the city should formulate a definite and comprehensive program with respect not only to its street railway franchises but also to other public utilities.

In this connection it is interesting to note the recommendations made by the committee on franchises of the National Municipal League at its Detroit meeting, November 22, 1917.

CLYDE L. KING.

*University of Pennsylvania.*

*Policeman and Public.* By ARTHUR WOODS. (New Haven: Yale University Press. 1919. Pp. 178.)

Most of the few books published in this country on police work have been historical in style or purely technical. None compares with this volume of lectures by ex-Commissioner Arthur Woods of New

York in presenting the subject from the policeman's point of view. He uses everyday speech and shows in a refreshing manner the mental processes of the "cop," rather than the mere mechanism of the work.

Very few men in the United States who have not done actual police work appreciate, and most of those who have done such work cannot clearly express, the difference between law from the viewpoint of the lawyer, judge or the district attorney, and from that of the policeman. The characterization of the policeman as constituting in himself a court of first instance, while not novel, is apt. In similar manner the chapters on rewards and punishments, graft, influence and the criticism of civil service promotions, show the grasp of a man who has studied policing at close range, who can think like a policeman, but who expresses himself in a clear and forceful manner interesting alike to civilian and policeman.

Few American departments have any course of instruction worthy of the name for new men or new superior officers, and in those courses which do exist, the instruction is almost wholly in military drill, rules and regulations, and "legal law"—not "policeman's law"—all too often given as a favor or a sideline by some lawyer or court official to the inevitable befuddlement of a recruit on the street. It would be very much worth while if this book were read by every civilian police commissioner in the United States, and then have it or an adaptation of it made a textbook for the instruction of police superiors and above all of the new man in police work. Assuming an honest department with a desire to improve, a study of this book would be as worth while for the spiritual and constructive side of police work as the study of the department rules and regulations is for the mechanical side.

G. H. McCaffrey.

*Boston, Massachusetts.*

*The Free City! A Book of the Neighborhood.* By BOUCK WHITE.  
(New York: Moffat, Yard and Company. 1919. Pp. 314.)

This book is an impassioned plea for home rule for cities. It is also a bitter attack on national government, especially "the Potomac scheme." The greater part of the book is devoted to pictures of free cities—"City States," "Industrial Democracies," "Communes," "Guild Cities," and the "municipality" at large. The entire field of history, both sacred and secular, is combed for examples and illustrations. Rome, Athens, and Jerusalem each have a fervid chapter.

The Hanseatic League cities, Florence and other "Mediterranean communes," as well as certain guild cities of Asia, are vividly pictured. The rest of the book is devoted to the author's philosophy, and to his interpretations of history and the mind of Deity.

The book has a great many beautiful passages, too many of which are offset by ugly epithet. It contains much accepted truth, often violently interpreted. The style is fantastic and disjointed. The text is full of extravagant and mystical descriptions of the "municipality" or "The Free City," which the author declares is "a piety, a spiritual adventure, a mysticism, aye, a love story," "made up of great people," "God's attempt to build for himself a habitation."

The conclusion is given that all ills of society result from our present form of government, and that if we could revert to the federation of free cities of the ancients we should develop all splendors, all social and civic virtues, unselfish citizens, patriots, geniuses, workmen who build beautifully.

MRS. ALBION FELLOWS BACON.

*Evansville, Indiana.*

*The Housing of the Unskilled Wage-earner.* By EDITH ELMER WOOD. (New York: The Macmillan Company. 1919. Pp. 321. Index.)

In the title of this book Mrs. Wood sets herself a problem which she fails to solve—and which no one else as yet has solved. There are intimations in various parts of the volume that building at cost with money furnished by the government is the solution. Yet toward the end the author herself says that it would be impossible for the government "to supply *all* the houses needed by wage-earners." There is no intimation as to how far short it might be expected to fall except in the immediately succeeding sentence: "Unless prevented in the interest of public health there would always be a residuum of people—the unfortunate, the ignorant, the shiftless, the miserly, the physically, mentally or morally subnormal—who would be willing to live in cellars or dark rooms, in filth and dilapidation, to save a few dollars a month of rent."

As this quotation indicates, the author has not gone into her problem deeply enough to present it clearly and logically. There is a lack of definitions and of standards—curious in a book dealing so largely with housing legislation—which not only weakens the argument but indi-

cates that the author herself has not a clear conception of relative values. Those who will be most irritated by this lack will be those who believe in government aid.

But if the argument is not so strong as it might be, there are chapters in the book telling of the extent of bad housing in the United States, giving a résumé of the history of American housing reform, describing housing legislation and the work of "model" housing companies, summarizing the housing experience of other countries—especially in the matter of government aid in financing—that are of real value by putting at the service of the reader in compact form a mass of information which heretofore has been available only in scattered pamphlets and reports.

JOHN IHLDER.

*Philadelphia.*

*Workingmen's Standard of Living in Philadelphia.* A report of the Bureau of Municipal Research of Philadelphia. By WILLIAM C. BEYER, REBEKAH P. DAVIS and MYRA THWING. (New York: The Macmillan Company. 1919. Pp. x, 125.)

The purpose of this study is to find out what annual income is needed under prices prevailing in the autumn of 1918 to give a fair standard of living to a family of five. The sum is found to be \$1636. The equivalent of the Chapin figures of 1907 under prices prevailing in 1918 would be \$1751.

The elements entering into the standard living costs of this standard family have been given in sufficient detail so that it may be possible at any time to ascertain the current cost of each item therein, and thus to find the cost of this standard of living at any price level. The volume represents a creditable bit of research work.

Inasmuch as the immediate object of the book is to find out what would constitute a fair minimum wage for unskilled public employees, the authors make the following recommendations:

1. That the city government of Philadelphia, acting through the finance committee of council or through the civil service commission, adopt the standard of living herein outlined as a basis for ascertaining currently the amount of a living wage for manual workers.
2. That the cost of this standard be ascertained at least once a year by the city government, preferably just before budget-making time.



3. That in fixing the wages of manual workers above apprentice grade no wage be made lower than the ascertained cost of this standard.

4. That at least once in five years a new investigation be made with a view of modifying the standard so that it will conform to any changes which may have taken place in the living standards of workingmen's families.

5. That standards of living similar in general outline to the one herein suggested for manual workers be devised for other occupational groups to serve as a basis for adjusting the rates of compensation applying to these groups.

These recommendations differ from the usual method of measuring a fair wage in that complete recognition is given to changing living standards.

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*The Anatomy of Society.* By GILBERT CANNAN. (New York: E. P. Dutton and Company. 1919. Pp. 216.)

"Humanity has a will backed by the creative will which animates the universe"—this sentence gives the clue to the author's social philosophy and scheme for social reorganization, and reminds us strongly of Comte and Ward, though without the logic of either. The first chapter on "Definitions" would have been stronger if he had stopped to define some terms and phrases which he uses later in the book. This would have made clearer his meaning when he contrasts work with drudgery, vision with law, nature with human life, organization with structure, the democracy of patriarchalism and economic power with the democracy of humanity. It might, too, have made unnecessary the statement that "an excess of goodness is as enervating to human life as a monotony of sunlight."

Authority, he holds, "lies in the social contract by which the individual acknowledges his social relationship in return for the advantages that can be won for humanity." Marriage is looked upon as essentially a contract to be dissolved as any other contract—especially when it fails to be creative of spiritual values. Women are considered to be especially qualified for citizenship in this reconstruction period as they are nearer to the spirit of humanity and less bound by customs, traditions and the "structure of finance"—the curse of modern European civilization.

The chapter on "Social Structure" seems to have given the title to the book, but the "structure" is not set forth clearly. The key to the chapter seems to be this sentence: "In the social structure the pendulum is public opinion, which, when the authority of the democracy of the artists and scientists is established—as it can be done by education—should swing so freely and with such momentum as to defy manipulation." One cannot get far in social science by building on figures of speech.

The author is a radical idealist, a humanitarian, an artist-novelist, but he is neither a sociologist, a psychologist nor a logician. The book, therefore, which is ostensibly a sociological treatise, is a keen disappointment.

L. M. BRISTOL.

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*The Ethics of Coöperation.* By JAMES H. TUFTS. (Boston: Houghton Mifflin Company. 1918. Pp. 73.)

The term "coöperation" in this monograph is used in its general derivative sense to connote associated action. Coöperation in this sense is contrasted with social organization characterized by dominance or by competition. "Dominance implies inequality, direction and obedience, coöperation implies some sort of equality, some mutual relation." Coöperation involves "contacts of mutual sympathy rather than of pride-humility, condescension-servility." The three above types of social organization are contrasted with reference to their provision for liberty, power and justice. Coöperation is stated to have as working principles "common purpose and common good," but the looseness of this definition is felt when the author describes as "coöperation" the relations of producer and consumer, employer and laborer.

The essay is deductive throughout except for a very brief historical statement. Though it is well written and at times epigrammatic, one feels that a more valuable contribution could have been made by a more specific use of the term "coöperation" and by analysis of the values of existing coöperative practices in the industrial field. No mention is made of the movement for economic coöperation among consumers or producers, or of the moral values of the diffused responsibility, the habits of mutual service and the philosophy of self-help through service which this movement cultivates.

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## MINOR NOTICES

The series of *War Volumes* published by the *New York Times* constitute the most comprehensive war history yet published. These twenty volumes make up a veritable war encyclopedia and cover every phase of the great conflict. The military aspects of the struggle form the main theme, of course; but the political and economic problems of these dramatic years also receive adequate attention. No individual author or group of authors could have acquired the facilities which the *New York Times* possessed in the gathering of this material. From the very outset of the struggle *The Times* had its correspondents at every belligerent capital and its representatives as close to every front as it was possible for any noncombatant to go. Its observers were stationed in every zone, and what it could not learn through members of its own staff, the *New York Times* managed to acquire through co-operative arrangements with some of the leading European journals. In this way a great mass of official data was gathered and the best of it has been incorporated in the *War Volumes*. The work is not a mere narrative, but also includes reprints of a great many important documents which are nowhere else accessible. Diplomatic correspondence, for example, military reports, the speeches of diplomats and statesmen, official communiques, and so forth are all inserted at their proper chronological places where they can be easily found. For this reason, among others, the series is as valuable to the student of public affairs and international politics as to the general reader. A set of useful maps accompanies the series and the final volume is devoted to an index.

Two recent volumes of interest to students of international affairs are Elizabeth York's *Leagues of Nations, Ancient, Mediaeval and Modern* (London, The Swarthmore Press, 337 pp.), and Charles Sarolea's *Europe and the League of Nations* (Macmillan 317 pp.). The former contains a survey of ten actual or proposed leagues of nations from the time of the Greek confederation to the Holy Alliance. Of especial interest are the chapters on Henry the Fourth's "Grand Design" and Rousseau's "European Federations." The book is well written throughout and contains an excellent list of references. Mr. Sarolea's volume is a collection of essays dealing with the interest of the various nations in the project of world federation. The most striking chapter of the book is one entitled "Abraham Lincoln versus Clemenceau."

Major General E. H. Crowder has set forth in his volume on *The Spirit of Selective Service* (Century Co., 367 pp.) a somewhat detailed but altogether interesting account of how the national army was raised to an unprecedented strength during the late emergency. He describes the entire machinery of registration, classification and calling to the colors. It is General Crowder's belief that this machinery, or something akin to it, could be profitably used for carrying through great national enterprises in time of peace.

Several volumes in the historical series known as the *Chronicles of America*, edited by Professor Allen Johnson and issued by the Yale University Press are of great interest to students of political science. Conspicuous among these is Professor Samuel P. Orth's *The Boss and the Machine* (203 pp.). This book deals in most illuminating fashion with such topics as the rise of the machine, the politician and the city, Tammany Hall, the lesser oligarchies, and the reform of party organization. The author wields a trenchant pen and delineates his portraitures with skill and vividness.

Among recent manuals of Americanization mention may be made of *The New American Citizen: A Reader for Foreigners*, by Frances S. Mintz, which is published by the Macmillan Company. It contains suitable material for the instruction of adult foreign pupils in evening schools. *Social Problems*, by E. T. Towne, published also by Macmillan, is a textbook for beginners in the field of social studies. *Lessons in Democracy*, by Raymond Moley and Huldah F. Cook, is a manual for adult immigration classes, which the same publishers have brought out.

The Atlantic Monthly Press of Boston has issued Joseph Husband's *Americans by Adoption* (153 pp.), which contains biographical sketches of nine foreign-born Americans, among them Carl Schurz and Jacob A. Riis.

Among miscellaneous volumes which will be of interest to many students of political science, mention may be made of the following: Carleton H. Parker, *The Casual Laborer and Other Essays* (Harcourt, Brace and Howe, 199 pp.) which contains an illuminating chapter on "The I. W. W.;" William J. Robinson's *Forging the Sword* (172 pp.) which gives a graphic story of the life and training of the 76th and 12th

*Divisions at Camp Devens*; Homer B. Vanderblue's *Railroad Valuation by the Interstate Commerce Commission* (Harvard University Press, 119 pp.) which is a reprint of various articles from the *Quarterly Journal of Economics*; O. F. Boucke's *Limits of Socialism* (Macmillan Co., 259 pp.); Ralph Albertson's *Fighting without a War* (Harcourt, Brace and Howe, 138 pp.), which is an account of military intervention in North Russia; and Col. C. L. Malone's *Russian Republic* (pp. 153) by the same publishers.

The Neale Publishing Company has issued a small volume on *Juridical Reform*, by the Hon. John D. Works of California (199 pp.). The book contains a critical comparison of pleading and practice under the common law and equity systems of practice, the English judicature acts, and the codes of the various American states.

*International Commerce and Reconstruction* by Elisha M. Friedman is issued from the press of Messrs. E. P. Dutton & Co. The book deals with those economic changes which have been going on beneath the spectacular military campaigns of the past half dozen years. It is a sequel to the author's *Labor and Reconstruction in Europe* but, unlike this volume it takes a definite stand on the issues presented. The book contains a great deal of useful and timely information, statistical and otherwise.

Messrs. Boni and Liveright have published *Current Social and Industrial Forces* by Professor Lionel D. Edie of Colgate University. The substance of the book is made up of selections from the writings of many authors, including Walter E. Weyl, J. A. Hobson, Thorstein Veblen, Herbert Croly, Graham Wallas and many others. For university students the volume is intended as a rallying-point from which further inquiry into current social and industrial forces may be made. It integrates and organizes some of the best contemporary thought.

Under the title: *The Constitutions of the States at War, 1914-1918*, the Government Printing Office has issued a compilation of considerable value to students of political science. In all, the constitutions of thirty-three countries are printed under the editorship of Herbert F. Wright. A brief historical note precedes each constitution.

General von Falkenhayn's book on *The German General Staff and Its Decisions, 1914-1916* (Dodd, Mead & Co.,) sets forth the operative ideas by which the German headquarters were guided during a critical period of the war. The narrative is confined strictly to military topics with little stress on political developments.

The *Canadian Annual Review of Public Affairs*, for 1919, contains the usual quota of excellent articles on all phases of Canadian government, economics and local affairs. It is issued by the Canadian Annual Review, Ltd., Toronto.

Messrs. Harcourt, Brace and Howe are sponsors for a volume on *The New Germany*, by George Young (333 pp.). The book contains chapters on the revolution, the reaction, the era of council government, and the new constitution. An English translation of the new constitution is printed in the appendix.

The same publishers have brought out Herbert E. Gaston's book on *The Nonpartisan League* (325 pp.) The author has been employed on the publications controlled by the league and this has kept him in close touch with the policy and achievements of the organization. He writes in no nonpartisan spirit, however, although he assures us that he has made a conscientious endeavor to be a faithful reporter of the facts and on the whole his book is a great deal more than special pleading. The style is interesting and the author's sketch of an extremely significant movement will well repay the time any student of contemporary American politics may spend in reading it.

*Social Theory*, by G. D. H. Cole of Magdalen College, Oxford, is one of the newer books on the list of Messrs. Frederick A. Stokes Company (220 pp.). It contains chapters on such topics as "The Forms and Motives of Association," "Government and Legislation," and "The Atrophy of Institutions."

A small volume entitled: *A More Christian Industrial Order*, by the Rev. Henry Sloane Coffin, has been published by the Macmillan Company (86 pp.).

Professor F. T. Carlton of De Pauw University has brought out, through Messrs. D. Appleton & Co., a short history of the American labor movement under the title of *Organized Labor in American History*.

## RECENT PUBLICATIONS OF POLITICAL INTEREST

### BOOKS AND PERIODICALS

BEATRICE O. ASHTON AND CLARENCE A. BERDAHL

#### AMERICAN GOVERNMENT AND PUBLIC LAW

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# The American Political Science Review

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Vol. XIV

NOVEMBER, 1920

No. 4

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## DEMOCRACY AND EFFICIENT GOVERNMENT— LESSONS OF THE WAR

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Under the happiest of conditions it is scarcely to be expected that democracy should result in a high degree of efficient government. For the very object of democracy is to give expression to desires and impulses which can only with difficulty be brought into harmony. Whether taken in the sense of the direct government of the people or in the sense of government by representatives of the people, democracy involves the reconciliation of conflicting views, resulting after much discussion and delay in the adoption of a compromise more or less unsatisfactory to both sides. In the formulation of its policies democracy is thus reduced to what is feasible and expedient in view of the present state of public opinion, while in the administration of its laws it must depend upon the executive ability not of its ablest citizens but of those who have succeeded in winning the confidence of their constituents. Moreover, in spite of obvious duplication of functions it is important that government be kept decentralized in order that the individuality of local areas may be preserved where national unity is not essential.

On the other hand efficiency is concerned with the attainment of the objects of government by the best and most direct means

and with the least possible cost. It seeks to put into effect the wisest and most advantageous policy irrespective of the prior approval of the people. In the administration of the law it is concerned with securing ability regardless of public confidence in the particular official; and it has no fear of the concentration of power necessary to secure unity and directness of national action.

In the normal times of peace those who believe in democracy as a principle of government have no hesitation in sacrificing some degree of efficiency to secure their ideal. There are definite moral advantages attached to self-government which make efficient government a distinctly secondary object. Law and order must, indeed, be maintained in the state, and certain conditions of public health and convenience secured; but whether these ends shall be attained in the largest measure and with the least possible expenditure of effort and money is less important than the fact that the means taken approve themselves to the citizen body by whom the agencies of government are set up and maintained. The educational value of the public discussion of measures, the training in self-restraint which comes from the necessity of adjusting conflicting views, the sense of the responsibilities of citizenship, are extrinsic benefits which are regarded as more than counterbalancing the ordinary degree of mismanagement and extravagance which accompany popular government. Under normal conditions, therefore, the problem of the statesman is to obtain as good government as is compatible with self-government.

But in time of war it is clear that a wholly different principle must prevail. The problem is then one of coördinating all the forces of the nation for the single object of providing a more effective fighting machine. The advantages of self-government must then be subordinated to the preservation of the national existence; the delays incident to discussion and debate must be overcome, and a unity of administration must be obtained even at the price of a temporary executive autocracy. For the sake of self-preservation it may be necessary for the state to suspend temporarily those very principles of individual liberty which the war is fought to maintain for the nation as a whole.

The purpose of the present paper is to point out the important changes which were made in the political institutions of the United States and Great Britain in order to adapt them to the needs of a national fighting machine, and to examine the special difficulties which were confronted by the United States at its entrance into the war by reason of its more rigid form of constitutional government. In the demands which it made upon democratic governments the war operated as a supreme test which revealed flaws in the machinery not otherwise noticeable. Many of these flaws will be found to be inseparable from democracy as a working form of government; others, however, will be found to be defects in the organization of the government which may be remedied without loss of its democratic character.

Modern war is of such a character as to give a distinct initial advantage to an autocratic government. For wars have ceased to be any longer a contest merely between the armed forces of the belligerents. The distinction long made by international law between combatants and non-combatants, while it still holds good in theory, has for all practical purposes been regarded as obsolete. The recent war has made it clear that armies are powerless in the field unless backed by the entire industrial organization of the country. The manufacture of arms and ammunition, the building of ships, the production of increased supplies of food, and the distribution of the raw materials of industry according to need, are all essential elements in the larger plan of campaign by which the deadlock of the battle lines is to be broken. Under such circumstances it is clear that preparedness for war consists, not merely in the maintenance of a trained army, but in the control over and the coördination of the national resources so as to permit of their immediate adjustment to the needs of the fighting forces.

In this respect the state socialism of Germany gave her a marked advantage over her more democratic opponents. The control exercised by the government over the raw materials of industry, over transportation, and in some degree over credit, greatly facilitated the task of transforming a nation at peace into a nation at war. It put at the disposal of the government

the organization and the clerical machinery which made it possible to mobilize the industrial resources of the country without the delay and confusion experienced in countries whose industries had never been subjected to direct state control. Moreover, once the war had broken out, the advantage of autocracy consisted in the absence of parliamentary responsibility and in the prompt and ready obedience of a people accustomed to discipline and command. The freedom of the executive in Germany from control by the Reichstag made it possible to carry through plans without the distraction incident to questions and interpellations, and without the disorganization resulting from the creation of coalition cabinets and war committees. Martial law could be put into effect without raising the issue of the violation of fundamental personal rights guaranteed by the constitution. Restrictions could be placed upon freedom of speech and of the press and a system of rationing food and other necessities of life could be adopted with the assurance of coöperation on the part of the people to whom governmental regimentation was a familiar policy. It may well be questioned whether the initial advantages in point of organization possessed by the German government were not more than offset by diplomatic blunders which a government in closer touch with public opinion might have been kept from committing, and also whether the advantages of disciplined obedience on the part of the people were not counterbalanced by the lesser degree of resourcefulness and endurance resulting from the paternalistic policies of the government. But it would seem that, at least in respect to the prompt and effective mobilization of men and of material resources, the more autocratic government of Germany had a distinct advantage over its opponents.

The difficulties confronting Great Britain and the United States upon their entrance into the war were due in part to the character of their governmental organization and in part to the individualistic traditions of their peoples. Both countries were obliged to enlarge greatly the executive powers of the government, to assume an unaccustomed control over the industrial life of the country, to create an enormous administrative staff, and to

impose restrictions upon the free activities of the citizen body. In addition both countries were faced with the problem of creating and equipping new armies for which no provision had been made in advance. As between Great Britain and the United States, the advantage lay with the former in respect to the facility with which its form of government could divest itself of its democratic character and create the unity of control essential to efficiency. The United States found itself with a government whose powers were divided between the national government and the forty-eight governments of the separate states, while in the national government itself a form of organization prevailed which divided responsibility between the legislative and executive branches of the government. On the other hand the United States had the advantage of observing, while a neutral, the experience of Great Britain in meeting the emergencies created by the war, and was thus enabled to act with far greater promptness and efficiency when its own turn came to mobilize its men and resources for the conflict.

The chief political problem before the British government during the course of the war was to secure the fullest measure of unity of control in the formulation of policies and in their effective execution, and at the same time to maintain the confidence of Parliament and indirectly of the people. The advantage of the British system of cabinet government as against the checks and balances of the American system was manifest from the outset. So long as the confidence of Parliament could be maintained the cabinet was able to run the government with a free hand, restricted neither by the jealousy of Parliament nor by the constitutional limitations peculiar to the United States. The control of Parliament remained in abeyance, but nevertheless ready to be exercised should a general feeling arise that the cabinet was deficient in its task. At the same time the authority of the cabinet at London extended to all parts of the kingdom alike, and no question could be raised as to the possible encroachment of its decrees upon the powers of local self-government in the different sections of the country. No constitutional difficulties were encountered in the way of the assumption of unlimited powers on the part of the government.

The outbreak of the war found the Liberal party, supported by the Irish Nationalist and Labor parties, in possession of a majority in Parliament. A truce was entered into with the Unionists, which resulted in the suspension of parliamentary interpellation and enabled the government to put through a number of emergency acts without delay. In June, 1915, a coalition cabinet was formed under threat from the Unionist party that it could no longer refrain from criticising the war program of the government unless it were represented in the cabinet. In turn, dissatisfaction was expressed with the coalition cabinet, and the demand was raised for the creation of a smaller body which could be released from responsibility for the conduct of the departments and devote its entire attention to the problems of the war. A war committee of six members was then formed within the coalition cabinet, and with the assistance of a military, naval and diplomatic staff it undertook a general direction of war measures, subject to a limited control on the part of the cabinet as a whole. Thus organized the coalition cabinet succeeded in maintaining the confidence of Parliament during the critical period accompanying the introduction of conscription. Criticism of the inefficiency of the war committee led, however, to a further reorganization of the government, and in the presence of a proposal that a council of war be formed, from which the prime minister was to be excluded, Mr. Asquith resigned and a new "War Cabinet" under the leadership of Mr. Lloyd George succeeded to the control of the government.

The war cabinet was a constitutional innovation of a striking character. It was not the result of a parliamentary vote, but of an agreement among the leaders of the different parties. Unlike the war committee it became directly responsible to Parliament, but it did not undertake the task of party leadership in the house of commons and its members attended the sessions of Parliament only on special occasions. Its relations with the larger body of ministers were somewhat uncertain. It ceased to exercise any active direction of the administration, and merely undertook to supervise in a general way the functions of the departments and to adjust conflicts of authority among the



old and new ministerial offices. In consequence of the complete elimination of the old Liberal leaders in the choice of the war cabinet and of the important ministerial posts, a Liberal opposition was formed in the house of commons; and Mr. Asquith, still holding the support of many of his former followers, several times came to the rescue of the group which had ousted him from the government.

Public opinion, as manifested in the press, welcomed the new cabinet as giving promise of a more energetic and efficient prosecution of the war, and looked upon the departure from constitutional precedent as fully justified by the needs of the situation. "It is better," said a writer in the *Fortnightly Review*, "that the war should destroy the traditional disorganization of democracy than that the traditional disorganization of democratic government should destroy democracy itself and the British race." On the other hand protests were heard from the Liberal press, not only to the effect that the "new kind of government" created an autocracy without improving the organization of the administrative departments in any respect, but also that it was dangerous that vital decisions, which would end the war or prolong it indefinitely, should be taken by four or five men alone, and that the ministers nominally responsible to Parliament for foreign policy, the army, and the navy, should have only a consultative voice in their decisions.

The creation of the war cabinet and the manner in which it undertook to exercise its authority resulted in the practical suspension of parliamentary government. Not only did the leading ministers discontinue attendance in Parliament, but a number of the other ministers had no seats in Parliament; so that information as to the policies of the government had to be obtained from undersecretaries, while Mr. Bonar Law, the former Unionist leader, now a member of the war cabinet, acted as a sort of "sentry, set on guard to protect the inner cabal from parliamentary snipers," ready to give the alarm should his defense of the government fail to allay distrust. Thus the unity of the executive and legislative departments, characteristic of the cabinet form of government, was actually replaced by an auto-

cratic executive, leaving Parliament with scarcely a semblance of its constitutional function of direction and control, and with no legislative functions other than the occasional passage of laws called for by the cabinet. The acquiescence of Parliament in so complete a reduction of its authority could only have been the result of its clear realization that it was better to give even a less efficient government a free hand than to risk the delays incident to change.

By contrast with the more practical attitude of the British Parliament, the French chamber of deputies insisted upon exercising its legislative functions. Its great committees dealing with the army and with foreign affairs held practically continuous sessions, to permit which the rules of parliamentary procedure were suspended; and while abstaining from interference in military affairs the committees undertook to give orders to the executive department and to exercise a direct control over the administrative services of the government, in order to insure that the supplies for the army should be equal to the emergency. At the same time the chamber continued to hold the cabinet directly to account for its policies; and cabinets headed by Viviani, Briand, Ribot, and Painlevé, rose and fell in succession, until the advent of Clémenceau, in November, 1917, gave stability to the government. In spite of the emergency the French chamber departed little from its constitutional methods during the war, insisting both upon dictating policies to the executive and upon criticising the government for its failures.

In addition to the problem of reorganizing its government so as to secure a more efficient administration and a greater unity of control, Great Britain was obliged to enlarge greatly the constitutional powers of the government. On the one hand it was necessary to bring the entire industrial activities of the country to the support of the military forces and on the other hand restrictions had to be placed upon the normal freedom of the individual citizen in order to prevent interference with the conduct of the war. Both of these objects were accomplished by the passage of the Defense of the Realm Act, together with its successive amendments. The assumption of control by the

government over the industrial resources of the country was gradual and tentative, progressing by degrees from control over the essentials of military provisionment to the complete mobilization of all resources, including the production and consumption of food supplies. The railroads were promptly brought under direct control of the government, and their administration was placed in the hands of a committee of railway managers with the president of the board of trade as chairman. Control over the coal mines was not at first deemed necessary, but the refusal of the miners' federation to accede to the regulations laid down for labor in other industries, and the threat of an impending strike, ultimately forced the government to take over the mines, and a new department was created to administer them. The prices of iron, steel, and copper were fixed, and priority regulations were drawn up in order to secure to the various industries their essential supplies in the order of their importance for the prosecution of the war. Serious labor difficulties were experienced from time to time in connection with the railways, and the government was finally obliged to apply the law declaring strikes illegal until resort had first been had to the arbitration of the minister of labor. Compulsory arbitration of disputes was prescribed in the case of the munition factories, and a drastic system of "leaving certificates," which later had to be abandoned, was adopted in the effort to check the flow of labor from one factory to another. On the whole the record of British war administration was marked by a gradual and tentative assumption of control over the national life, resulting in delays which on more than one occasion were little short of fatal.

If British democracy was somewhat slow to realize the necessity of assuming control over the industrial life of the country and slower still to organize its government upon an efficient basis, it early recognized the necessity of placing restrictions upon the freedom of its citizen body in order to prevent the giving of aid to the enemy. The Defense of the Realm Act and its amendments struck down at one blow the traditional rights of British citizenship and instituted a régime of military law which was nothing short of a revolution in British consti-

tutional procedure. The Crown in Council was empowered to authorize the trial by court martial, and in the case of minor offenses by courts of summary jurisdiction, of persons violating the regulations prescribed. These regulations were of a most sweeping character, and were designed to prevent persons from communicating with the enemy, from spreading false reports or reports likely to cause disaffection to the government, and otherwise from giving assistance to the enemy or endangering the successful prosecution of the war. Searches and seizures were authorized without warrant and on the mere ground that there was "reason to suspect" that the premises were being used in a way prejudicial to the safety of the realm. Freedom of speech and of the press were both restricted to the point where it was legally possible to impose penal servitude upon the speaker or journalist who speculated upon the plan of campaign or criticised the accommodations of the army camps. Drastic as these regulations were, the British public submitted with little resistance, realizing that the presence of enemy aliens made it necessary to confer arbitrary powers upon the government, and apparently confident that as soon as the emergency was over their traditional rights would be restored to them.

The difficulties experienced by British democracy in adapting itself to the demands of the war have resulted in a number of plans of reconstruction bearing both upon the organization of the government and upon its functions. The most important of these plans perhaps have been those presented by the machinery of government committee of the ministry of reconstruction. The report of the committee first attempted to define more precisely the relations of the cabinet to Parliament. It described the essential functions of the cabinet as consisting in the determination of the policies to be presented to Parliament, the supreme control of the national executive in accordance with the policy prescribed by Parliament, and the continuous coördination and delimitation of the activities of the several departments of state. The tentative suggestion was made that the solidarity of the cabinet should be broken up by making the individual members responsible to Parliament and removable

by a vote of want of confidence. It further advocated that the cabinet be reduced to a smaller body of ten or twelve members in place of the twenty or more members of 1914. At the same time the number of ministerial departments should be reduced in accordance with a scheme to distribute the business of government into ten main divisions, with occasional subdivisions. In this respect the recommendations of the report form an interesting subject of comparison with the present organization of the national government of the United States and with the schemes of administrative reorganization recently adopted by some of the separate state governments. No general plan of administrative reorganization has, however, been as yet actively undertaken in Great Britain. Two new ministries, of health and transport, have been established; and substantially the pre-war cabinet has been revived.

The difficulties confronting the government of the United States at its entrance into the war parallel in almost every case those experienced by the British government. The outstanding difference between the political situation in the two countries was due to the omnipotence of Parliament on the one hand and the strict limitations of a written constitution on the other. Parliament was the maker of the British constitution as well as its instrument of government; and in consequence Parliament could reorganize and enlarge the executive department and could assume whatever powers were necessary to meet the emergency without question as to the constitutionality of its acts; at the same time the unity between the executive and legislative departments prevented friction between Parliament as a legislative body and the cabinet and ministry as its executive committee. In the United States, however, there was the question as to the extent of the war powers of Congress and of the President, there was the division of power between the central government and the member states, and there was the formal separation of the legislative and executive departments of the government.

The first and second of these constitutional difficulties were overcome without marked loss of efficiency, but the lack of unity in the executive and legislative departments proved from

beginning to end a serious handicap in the effective prosecution of the war. The dissatisfaction of many of the leaders in Congress with the personnel of the executive department and with its methods resulted in numerous investigations of boards and bureaus, and in a long-drawn-out contest between the President and Congress as to the means of putting into effect the much-needed reorganization of the administrative departments.

The lack of unity was, of course, not wholly due to the system of checks and balances provided for in the Constitution. Legally speaking there was nothing to prevent the closest coöperation between Congress and the President. But as a practical matter the absence of any control by Congress over the President naturally led it to view with suspicion the exercise by him of those comprehensive powers which it had itself conferred upon him. Congress could make appropriations, but it could not control the methods of spending the huge sums of money which it so freely granted. Congress could bring the industries of the country under the direction of the government, but it could not control the agencies set up by the President for the effective execution of the powers granted him. In consequence the criticism in Congress of the conduct of the administration was for the most part destructive rather than constructive, and had the effect rather of discouraging the country with the lack of progress made than of stimulating the executive department to greater efficiency in the prosecution of the war. But making due allowance for the lack of coöperation between the President and Congress due to personal reasons, it remains true that the constitutional separation of the legislative and executive departments resulted in constant friction, in needless delay in the passage of the necessary legislation, and in duplication of activities and extravagance of expenditure which under more critical circumstances might have proved disastrous to the country.

It is a significant feature of a constitution which in other respects narrowly hedges in the departments of the government that in respect to the conduct of war it confers comprehensive and unrestricted powers upon the President and upon Congress within their respective spheres. The President is made "com-

mander-in-chief of the army and navy of the United States, and of the militia of the several states, when called into the actual service of the United States." He is thus put in supreme control of the military conduct of the war, and complete unity of military command is secured. The powers of the President as commander-in-chief are, however, limited to the direction of the army and navy, and no new political powers may be assumed by him on the basis of that authority. He may plan campaigns, dispose of the military and naval forces, direct operations, and execute the provisions of military law; but outside that sphere he may not constitutionally act without express warrant of Congress.

Exceptions from this rule occurred during the Civil War when President Lincoln, in the effort to suppress opposition to the policies of the government, authorized searches and seizures without warrant, and in spite of the protest of the Supreme Court suspended the writ of habeas corpus. During the recent war President Wilson kept more strictly within his constitutional powers, but he did not hesitate to use the influence of his office as well as his power over foreign affairs to further the cause of the country. His successive statements of the ideal objects for which the United States had undertaken to fight undoubtedly aroused an enthusiastic zeal in the minds of thousands who would have responded but lukewarmly to an appeal based upon the technical grounds of war. At the same time the declaration of the President that the victory of the allied cause would insure the liberation of oppressed nationalities and the recognition of the principle of self-determination helped to weaken the allegiance of large numbers within the ranks of the enemy armies. But apart from those powers inherent in his office, the President remained during the war, as before, merely the executive officer of the government, unable to act upon his own initiative and obliged to bide the time of Congress before he could take the measures necessary to back up the army and navy with the required supplies of war. It is important, therefore, to distinguish sharply between what the President could do independently as commander-in-chief and what he could do only after Congress had specifically authorized him to act.

On its part Congress was for all practical purposes a legislature of unlimited powers. By the Constitution Congress is given the power "to raise and support armies." The grant of power is comprehensive and unqualified, and it endows Congress with authority to take all steps necessary to the successful prosecution of war. What if the measures taken by Congress come into conflict with the normal operation of the provisions of the Constitution? In such cases the war powers of Congress must be regarded as paramount. The reserved rights of the separate states and the guarantees contained in the first eight amendments must be restricted to the extent necessary to permit the free exercise of the war powers.

In the recent war, demands had to be made upon the entire industrial resources of the country to furnish the materials needed to support the armies raised by the Selective Service Act; and Congress was forced to bring under the control of the government a hundred forms of business life which in normal times would have been completely beyond its control. In no instance was the constitutionality of the assumption by Congress of these new powers successfully contested. The validity of the Selective Service Act was questioned as being in excess of the powers of Congress and in violation of other clauses of the Constitution; but the court found no difficulty in disposing of the objections raised. Comprehensive and far-reaching as were the functions undertaken by the war industries board in determining priorities in respect to the production, delivery and use of materials and supplies, as well as in fixing prices and regulating methods of production, no question was raised as to the authority of the council of national defense under whose direction it acted. The Shipping Board Act of 1916 and its subsequent amendments brought the entire shipbuilding resources of the country, as well as ships already registered, under the direct control of the government. The production and distribution of food products and fuels was regulated and prices were fixed where necessary. The operation of the railways, telegraphs, and telephones was taken over by the government in accordance with a contract for their use, the terms of which were fixed by the government. If the



government refrained from extending its control over the labor engaged in essential industries and preferred to have recourse to voluntary agencies for the settlement of industrial disputes, it was not from lack of constitutional power to act in the case of the laborer as in the case of the employer and his factory. Labor, indeed, successfully resisted the establishment of compulsory arbitration tribunals. But while expediency dictated acquiescence in its attitude of opposition to any form of industrial conscription, it would have been clearly within the power of Congress to have applied compulsion to workers in essential war industries as well as to the men in the army for whom the munitions were being made.

Constitutional objections were raised in a number of cases to the various laws passed by Congress to prevent interference with the conduct of the war. In these instances the government was not calling upon the positive aid of the citizen in the prosecution of the war, but was imposing restrictions upon the liberty of the individual and thus coming into conflict with the bill of rights of the Constitution. The Espionage Act in its original form undertook to penalize the offense of making false statements with intent to interfere with the prosecution of the war and particularly the offense of obstructing the operation of the draft act. The amendment to the Espionage Act, known as the Sedition Act, was directed against interference with the sale of liberty bonds and against the use of language abusing the form of government of the United States, the national flag, or the uniform of the army or navy. In both instances the freedom of speech guaranteed by the Constitution was held to be not absolute, but conditional, that is, subject to such restraints as are necessary to protect the community against the menace of sedition or the defeat of its purposes in the war. Greater difficulty was experienced by the court in upholding the application of the Sedition Act, owing to the more remote connection between language abusive of the form of government of the United States and the protection of the vital interests of the nation in the war; and a strong dissenting opinion was rendered by Justice Holmes in a case involving such language when uttered under conditions

which did not appear to him to indicate the intention of giving aid to the enemy.

Sharp discussion in Congress and in the press took place over the issue of a censorship of the press, and in the face of strong opposition the provision asked for by the President was eliminated from the Espionage Act. A modified form of censorship was established, which consisted in the voluntary submission of the press to the decision of the committee on public information with regard to the expediency of publishing news items relating to the progress of the armies in the field. It would seem clear, however, that if Congress had acquiesced in the view of the executive department and created a compulsory censorship similar to that set up in Great Britain by the Defense of the Realm Act, the courts would have upheld its constitutionality. The distinction is commonly made between a law penalizing statements made in contravention of regulations prescribed and a law requiring the approval of a board of censors before matter may be published. Even the latter more drastic form of censorship would appear to be justified if urgently necessary to prevent by anticipation the publication of injurious matter. Doubtless it was inexpedient to establish such a censorship under the circumstances with which the United States was faced. That it would have been constitutional if regarded by Congress as essential to the protection of the country may be confidently asserted.

It was in relation to the organization of the administrative departments that the system of the separation of the powers of government manifested its greatest weakness and compelled attention to the need of readjusting the relations of Congress and the executive. Congress, as we have seen, put at the disposal of the President practically the entire resources of the country; but being unable to control the President or the heads of the executive departments directly, Congress could but look on with impatience at what it considered in many cases to be an inefficient and dilatory execution of the laws it had enacted. The personal aloofness of the President and of some of his cabinet doubtless contributed to the lack of confidence of many in Con-

gress; but apart from these accidental reasons there was the inevitable tendency to criticise publicly and sharply simply because there was no other way of forcing a change in the methods pursued by the executive department.

In consequence of the lack of confidence of Congress in the efficiency of the conduct of the administration, proposals were made that a new department or ministry of munitions should be created, which should be given complete control over supplies of every kind for the army and navy; but the opposition of the President led to the abandonment of the plan. A more thoroughgoing reorganization, or rather reconstruction, of the executive department was urged by the chairman of the committee on military affairs in the senate, in the form of a war cabinet, to be composed of three persons who should have the power to coördinate and control the functions of all the executive departments and agencies. The war cabinet would thus have been a small directorate exercising practically unlimited powers of control and leaving to the President only the power to review their decisions. The opposition of the President to such a body was a foregone conclusion, while the constitutionality of the proposed body was at least open to question. As an alternative measure the President requested Senator Overman to introduce a bill which would permit the coördination and consolidation of the executive bureaus and agencies "in the interest of economy and the more efficient administration of the government." The bill was finally passed on May 4, 1918, and empowered the President to redistribute the functions of the executive agencies and to make transfers both of functions and of personnel from one department to another; but by reason of the long delay in the passage of the bill the President had already resorted to informal methods of coördinating the various bureaus, and no sweeping changes were made as a result of his new powers.

Looking at the long controversy between the President and Congress it can not be doubted that the system of checks and balances provided for in the Constitution proved a very real source of trouble and was the cause of delays and inefficiency which a unified system of government, under a cabinet responsible

to the legislature, might readily have prevented. Cabinet government in Great Britain made mistakes of its own; but at least in point of organization for effective action it had the advantage over the separation of powers by which the Constitution of the United States originally sought to safeguard democratic government.

The internal organization of Congress was responsible for further friction in the operation of the governmental machinery, but less difficulty was found in this case in providing a remedy. Apart from the constitutional obstacle presented by a bicameral legislature, with possibilities of delay resulting from the necessity of reconciling conflicting views of the two houses, the committee system under which Congress is organized for legislation exhibited several features which were at once undemocratic and inefficient. It so happened that the rule of seniority, by which the chairmen of committees are chosen on the ground of length of service in Congress, in several instances placed at the head of the important committees men who were out of sympathy with the policies of the executive. For example, the chairman of the house committee on military affairs was so far opposed to the plan of raising an army by conscription that it became necessary to call upon the ranking Republican member of the committee, a German by birth, to take charge of the bill. The chairman of the foreign relations committee of the senate, as well as the chairman of the house committee on ways and means were both strongly opposed to the declaration of war. Under such conditions it could scarcely be expected that prompt action would be taken by the committees in presenting the measures called for by the President and approved even by a majority of Congress itself.

A word must be said with respect to the relations between the national government and the governments of the several states. Here, in spite of the constitutional lack of unity, a remarkable degree of coöperation was obtained. In the first place the state governments were called upon to acquiesce in the encroachments upon their authority involved in the assumption by Congress of so large a control over the industrial life of the country. The railway administration, for example, automatically cancelled a

large part of the authority of the state railway and public service commissions. The establishment of cantonments in different parts of the country resulted in the creation of important communities beyond the control of the state governments. The Food and Fuel Control Act and the subsequent War-time Prohibition Act made deep inroads into the normal police power of the states.

In the second place the exceptional demands created by the war led the states as well as the national government to enter new fields of legislation in the endeavor to provide for special local needs which could not be met by general laws. State councils of national defense were organized to coöperate with the national council in the work of mobilizing the resources of the state and maintaining law and order under the trying conditions created by the war. Special laws were passed to assist the families of men in service, to regulate the use of food and fuel, to remedy the shortage of labor, and to check the activities of alien enemies and their sympathisers.

In the third place the necessity of securing coöperation between the administrative departments of the state and national governments led to the establishment of new and more intimate relations between them, both in the form of conferences between the state governors and the secretary of war, and in the form of local conferences between the governors of neighboring states having special problems of their own. On the whole the relations between the national government and the states during the war showed that the large powers of local self-government possessed by the states, although resulting in considerable duplication of effort and consequent lack of efficiency, were not a barrier to coöperation in all the more important problems before the country, while at the same time they had the effect of reconciling the population of the states to restrictions which might have created resentment if they had emanated from the central government alone.

The outstanding lessons of the war in respect to the organization and functions of the government bear chiefly upon the problem of readjusting the division of powers between the

national government and the states and upon the problem of reorganizing the system of checks and balances within the national government itself. Many of the powers which Congress was enabled to assume as implied in the power to raise and support armies were found to be powers equally needed in the times of emergency immediately following the war. The Lever Food and Fuel Control Act was found useful both in restricting post-war profiteering and in forming the ground of an injunction to restrain a general strike in the soft coal mines. The conclusion is suggested that it might be advisable to confer upon Congress the power to do directly what it has been able to do only through the technical exercise of the war powers. Already the powers of Congress over commerce between the states have been strained to the point of maximum elasticity in certain parts of the field of economic and social legislation. Yet there is clearly need that Congress should possess, for use in time of urgent need, the power to control the distribution of the raw materials of industry by creating priorities for the more essential industries, the power to fix the price of staple foodstuffs and of fuels, the power to regulate the business of insurance, and other similar powers which cannot be exercised effectively by the individual states. It has long been recognized that the constitutional division between the powers "delegated" to the national government and those "reserved" to the states have left unoccupied areas between the prescribed limits of the national jurisdiction and the limits of individual state action. The war powers of Congress led it to enter parts of this unoccupied area, and it would seem that the time has come to confirm its right of legislation by constitutional amendment.

The necessity of reorganizing the relations between the several agencies of the national government has been impressed upon the country even more forcibly since the signing of the armistice than during the actual period of the war. The inefficiency in the conduct of the war resulting from the formal separation of the legislative and executive departments was rendered relatively insignificant in view of the positive accomplishments of the government. The vast contribution made by the United States

to the winning of the war makes criticism of incidental confusion and delay seem meaningless now that the crisis is over. But the deadlock in the machinery of government which has come about as a result of the difference of opinion between the President and the majority of the senate with regard to the ratification of the treaty of peace forms an impressive lesson in the need of a change in the fundamental relations of the legislative and executive departments. The proposal that a constitutional amendment should be adopted providing for the union of the two departments by the establishment of a responsible ministry is doubtless too novel to the public to be expedient at the present moment. The government of the United States has developed along its present lines too long to be abruptly transformed without serious political upheaval, even if any large body of public opinion could be found to endorse the change.

More moderate proposals in the nature of transitional steps towards complete unity may, however, be advocated. The most urgent of these is doubtless the adoption of the budget bill now pending in Congress, the principle of which has been endorsed by both of the great parties. A further suggestion recommends that the administration should propose and explain not only the budget but all of its bills openly in Congress and fix a time when they shall be considered and put to vote. The initiative in legislation would thus be transferred to the administration, without, however, taking from Congress its coördinate power to act should the administration fail to do so. The tendency would be for the administration to take over from the committees of Congress the task of framing the bills, while Congress would exercise wider powers of criticism and control.

It is generally agreed that the price of democratic government under present conditions must be a greater or less degree of inefficiency. With the most perfect machinery of government available democracy would still make but halting progress because of its unwillingness to put the necessary restraints upon its own extravagance and because of its choice of leaders who are either mediocre in ability or reluctant to put forward policies which may bring them into disfavor with current public opinion.

But accepting these conditions as inevitable, it is still important to inquire whether improvements cannot be made in the existing machinery of government, both to make it more responsive to the will of the majority and to enable it to carry out its desired objects with less friction and duplication of effort. The experience of war-time administration in the United States has pointed the way to a number of readjustments which would give added efficiency to the government without loss of democratic control.



## ECONOMIC ORGANIZATION FOR WAR

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As shown in the struggle recently ended, modern war means "a nation in arms." The old-time distinction between fighters and workers was almost obliterated, and there was an industrial army as well as an army in the field. The labors of the men and women behind the lines were essential to the effective operations of the men in arms. That this condition was recognized by the governments themselves is shown by the classifications of workers, according to which those whose special skill or ability was essential to the conduct of war industries were taken out or kept out of the army and retained in the factories, mines, workshops, and fields. In various ways the old lines between soldier and civilian, between war operations and the work of production, were broken down. The Germans made no distinction between war vessels and merchantmen. They deliberately destroyed coal mines and factories, growing crops and cattle; this was done with a military purpose, for the sake of lessening the military strength of the enemy. So, too, the former distinction between contraband and free goods was obliterated. Whole nations were in arms, and all their resources were mobilized to carry on the titanic struggle.

This world conflict has taught us that war is not waged altogether by armies in the field. It is a contest between the industrial organization and technique of the opposing nations. It is not carried on by money alone, but by the total resources, material and human, that can be concentrated in a combined, productive effort. The World War gave the first opportunity for a complete application of the modern factory system of production in warfare. Methods of production have been completely revolutionized since the Napoleonic wars, the last general

European struggle, and the smaller conflicts since that time have not involved the complete utilization of the industrial resources of the nations engaged. In the late war, however, the whole productive energies of the belligerent nations were thrown into the fight. The production of raw materials and food, the manufacture of munitions, ships, airplanes, automobiles, clothing, and a multitude of other things, was carried on by the most efficient machine processes and large-scale methods, while the transportation of men and supplies was effected with the utmost expedition.

War has meant, therefore, the industrial organization of the nation, and victory has been dependent not merely upon the number of men in the field and on the seas, nor upon the strategy of warfare, but to an even greater extent upon the effectiveness of the industrial organization behind the lines. This is well illustrated by the complete collapse of Russia, which was inevitable even before the revolution of 1917, and which was due in large measure to the unwise withdrawal of large numbers of men from basic Russian industries, so that with enormous armies in the field it became impossible to furnish them adequately with munitions and other supplies. On the other hand, Germany's industrial reorganization was hastened by the fact that the cutting off of foreign supplies by the British blockade compelled an immediate shift from peace to war production on the part of many factories if they were to survive at all.

During the two and a half years prior to the entrance of the United States into the war, the industries of this country had been gradually organized upon lines of war production for the European belligerents. Certain of the industries that produced those commodities which were in greatest demand had reached a high point of efficiency, but it was on the whole a scrambling, competitive market in which the Entente Allies bought their supplies. There was as yet no coördination of effort, no coöperation or unity of purpose. This was true of production; the Allies early learned through costly experience the necessity of arranging a common purchasing agency.

The government was as ill-prepared and as unfitted as was private industry to assume the task laid upon it by the entrance of this country into the war. In our federal system of government, control of industry has remained for the most part with the states; at only a few points did the national government touch business and trade and exercise control over them, though the tendency in recent years had been in the direction of greater regulation. Beginning with the establishment of the interstate commerce commission in 1887, whose jurisdiction had been gradually extended so as to include telephone and telegraph, express companies, pipe lines, and other common carriers, as well as railroads, the authority of the national government had been steadily widened until it covered the inspection of food, the control of combinations, and currency and finance, and to a lesser extent was able to control competitive enterprise in other directions.

With the entry of the United States into the World War it became necessary to reorganize the industries of the country from a peace to a war basis. At once difficulties unsuspected and at times seemingly almost insuperable presented themselves. The obstacles to be overcome were enormous. The size of the country, the sectional and regional distribution of the industries, and the uncoördinated character of the transportation systems, presented serious physical difficulties. Almost greater were the difficulties of securing unity of sentiment and purpose in the polyglot nation. Public opinion had to be organized, as well as production. The political traditions of liberty and the economic habits of individualism threatened to prevent the coöperation that was necessary for the successful prosecution of the war. The economic virtues of peace were not suited to an effective war-time organization, and many people doubted whether a democracy could successfully cope with a military despotism. The outcome has shown, however, that although its movements may be slow, a democracy once moved to action carries with it an imponderable weight of spiritual power which more than offsets the discipline and obedience of a people trained under militarism.

It took England more than a year to learn that the necessary man power could not be secured for the army by voluntary enlistment, and that the necessary production of war materials could not be left to the voluntary and uncoordinated efforts of industry. Unfortunately, the lesson of England had not been thoroughly taken to heart by the people of the United States. It was necessary for war industry to be stimulated and expanded and for business in general to be readjusted to war requirements. To effect this reorganization the government relied at first upon the ordinary economic incentive of high prices. By affording an opportunity for large profits to the producers of war materials, it hoped to divert a sufficient number of establishments and labor into war production to yield the necessary supplies. In fact the program of the administration, which planned the spending of nineteen billion dollars in the first year, surpassed the productive capacity of the plants that could be diverted to these purposes.

In time, no doubt, such a policy would secure the necessary readjustment of business to war requirements. Capital and labor would be withdrawn from the production of nonessentials and these by reason of their scarcity would rise in price. At the same time the absorption of the surplus income of the people in taxes and subscriptions to bonds would leave them less to spend for such purposes. Such a shift of production is, however, slow at best, and it was opposed in this country, as in England, by the slogan of "business as usual" and by the expenditure on the part of wage earners of their unprecedentedly high wages for luxuries. It was evident that the volunteer system, whether for the raising of an army or for the mobilization of labor and capital in war production, was inadequate. During the first few months much was done; production was stimulated, and the foundations were laid for future work on a large scale. But there was great confusion, conflict of counsel, and little real guidance.

It was clear that coordination of effort was needed, and that this could be had only through the extension of government control. Unfortunately, however, no centralized administration

was set up for dealing with the problems of the war as a whole. We did not even go so far in the direction of administrative unification as did the English by the establishment of a ministry of munitions. A promising agency had, indeed, been created in August, 1916, known as the council of national defense, which was organized the following March, but this was a loose organization with purely advisory functions. It consisted of the secretaries of war, the navy, agriculture, interior, commerce, and labor, and was assisted by an advisory commission of seven civilians. The first work of the council was the consideration of plans for industrial mobilization and the collection of information as to the industrial resources of the country. For this purpose each of the seven members of the advisory commission was appointed chairman of a committee in charge of a field for which he possessed special knowledge, the subcommittees covering munitions, supplies, raw materials, transportation, engineering and education, medicine, and labor. These committees did much to work out the preliminary problems in connection with the subjects over which they had jurisdiction, and by reason of the ability and knowledge of those who were called to serve, their advice was generally accepted. As the war progressed, however, it was clear that strong administrative boards must be created to handle the problems authoritatively, and the original functions of the council of national defense were consequently gradually taken over by the various war boards.

First in chronological order, and possibly in order of importance came the shipping board. The circumstance which brought the United States into the war, namely, the unrestricted use of submarines by Germany, pointed to one of the greatest dangers that threatened the allied cause. It was of no use to raise food, to produce supplies, or to train soldiers if they could not be transported to Europe. The shipping problem was without question of fundamental importance. The United States shipping board, authorized by act of Congress on September 7, 1916, was organized for business the following January, and was given control of all shipping registered in the United States. Later it received power to requisition any American vessel, and shortly

after it took over the completion of all ships then building in American yards. The interned German vessels were also under its control.

The actual construction of vessels was intrusted to the government-owned emergency fleet corporation, which was organized for the sake of speed in action and the avoidance of governmental red tape. Delayed for a time by controversies over the respective merits of steel and wooden and concrete ships, a year elapsed before results began to be evident. Much was done in the interval, however, in bringing about a more economical utilization of existing shipping facilities. By the diversion of ships from longer to shorter voyages and from the carriage of nonessentials to the transportation of troops and supplies; by means of better loading and quicker turn-arounds so that ships could make more voyages in the course of a year, the availability of existing tonnage was greatly increased. In spite of the continued sinkings by submarines and consequent loss in total world tonnage, there was an actual increase in the amount of goods carried.

Next to the necessity of providing ships, the most important problem before the American people was the furnishing of a sufficient supply of food for our army in France and for the allied countries. Never wholly self-sufficient, the countries of Europe were now less than ever able to produce food sufficient for their own requirements, and even in the first three years of the war made heavy drafts upon the stores of the United States. In this country the rapid growth of the population and the building up of great urban centers had created a situation in which the food production of the United States merely sufficed for the needs of our own people. The enormous exports of thirty years previous had entirely disappeared, and it is safe to say that if the World War had not occurred, the United States would even now be importing foodstuffs instead of exporting them. The problem which presented itself, therefore, was a twofold one: first, to increase the production of food; and second, to reduce its domestic consumption.

In contrast with the work along other lines, the control of food was administered at the beginning entirely upon a volunteer basis. To carry out this policy a food administrator was appointed. The coöperation of consumers was secured; they were asked to observe wheatless and meatless days, to consume less sugar and wheat, and in other respects to conform to the regulations of the food administration. Voluntary coöperation, however, was not sufficient, and authority for comprehensive control of the food situation was given by the Food and Fuel Control Act of August 10, 1917. The purpose of this act was to assure an adequate supply and to facilitate the movement of food, to prevent monopolization and speculation, and to establish government control of necessities during the war. For the purpose of buying the necessary food supplies for the military forces, for the Allies and for the Red Cross and similar agencies, a grain corporation was organized, all of whose stock was owned by the government. An effective method of domestic control over the food supplies of the nation was devised in the license system, which affected cold-storage warehouses, other warehouses and elevators, importers, manufacturers and distributors of the more important food products, brewers, manufacturers and dealers in farm implements and machinery, etc. Control was also exercised over prices by a system of fixation of reasonable prices and profits. Finally, the amount of various food products that could be used by manufacturers and consumers was carefully regulated. By all these methods there was secured a surplus of food for our armies and the Allies, and at the same time the people of the United States were protected against excessive prices.

Another economic problem connected with the war which became most familiar to the people of the United States was that of obtaining an adequate fuel supply; this undoubtedly ranked next in importance after shipping and food. The hope of acquiring additional sources of coal supply was undoubtedly one of the factors that induced Germany to enter upon the war, and the control and stimulation of coal production during the war was one of the urgent problems before all the belligerents.

In the United States the control of fuel was provided for by the creation in August, 1917, of the United States fuel administration. There were three aspects of the coal problem which developed as time went on, and to cope with them different divisions were established. These were production, conservation, and car service. To the production division was given the task of stimulating the production of coal throughout the country, which was done by educating and inspiring the laborers. The conservation division sought to save coal by a program of education of consumers, and that of car service achieved a better distribution and movement of cars. During the winter of 1917-18 the serious congestion of the railway transportation service and the severity of the weather brought about a coal famine which was met by the temporary expedient of coalless days and lightless nights. As a result of this experience a license system for dealers was thereafter adopted, and a zone system of distribution was put into effect which was designed to eliminate crosshauling of coal.

If the industrial resources of the country were to be effectively mobilized for war, it was evident that a further step would have to be taken to secure coöperation and harmonious unified action of the productive forces of the nation. To secure these ends the war industries board was created. At first a subordinate body of the council of national defense, it soon became so important that it practically absorbed the parent body. Its chief activities fell under the three heads of procuring supplies for the army and navy, in which it acted in an advisory capacity; of securing preferences in production and delivery for government orders, which soon led to the establishment of priorities; and, finally, of securing supplies at a reasonable price. As a result of criticisms, the board was completely reorganized in March, 1918, and the administration was highly centralized in the chairman. The functions of the board were well described in a letter of the President of March 4, 1918:

(1) The creation of new facilities and the disclosing, if necessary the opening up, of new or additional sources of supply;



(2) The conversion of existing facilities, when necessary, to new uses;

(3) The studious conservation of resources and facilities by scientific, commercial and industrial economies;

(4) Advice to the several purchasing agencies of the government with regard to the prices to be paid;

(5) The determination, wherever necessary, of priorities of production and of deliveries, and of the proportions of any given article, to be made immediately accessible to the several purchasing agencies, when the supply of that article is insufficient, either temporarily or permanently;

(6) The making of purchases for the Allies.

By virtue of its wide powers and the importance of its functions, the war industries board exercised an increasingly strict control over the industries of the country and promised to become the sole directing governmental agency. By means of its priorities division, working in connection with the fuel and railroad administrations, it was able to secure the diversion of raw materials to necessary war production and to ensure maximum output from industries engaged in war work. Unavoidably under such a program, nonessential industries suffered or went out of existence. Preference lists were established which placed industries in the order of their importance, on the basis of which classification they were accorded fuel, materials, labor, and transportation. The policy of price control, which was administered in coöperation with a number of other boards and departments of the government, was steadily broadened.

The regulation of foreign trade came much later than the other extensions of governmental control that have been described. But it was finally realized that if the blockade was to be thoroughly enforced against the Central Powers, a most effective weapon lay in the hands of the United States, from which was drawn so large a proportion of raw materials, munitions, foodstuffs, and other supplies going to Europe. The passage of the Espionage Act in June, 1917, permitted a larger control over passports and exports, and to deal with these a bureau of export licenses was soon organized. It was evident,

however, that broader powers were necessary for dealing with the situation, and finally, in October, a war trade board was created, which, in conjunction with the activities of the alien property custodian, possessed full power to curtail enemy trade. The activities of the board may be roughly grouped in three divisions: those relating to the control of exports; those relating to the control of imports; and those relating to enemy trade.

In order to provide that the resources of the country should be used primarily for the prosecution of the war, export conservation lists were established which either prohibited or placed under license the export of a specified list of commodities which were essential for war purposes. By the time the armistice was concluded, a thoroughgoing machinery had been worked out for the virtual rationing of neutral countries. Similarly, imports were classified according to their importance and nonessential imports were rigidly restricted. Those which were necessary for war purposes, either to ourselves or to our Allies, were given every preference in the matter of shipping; as the available tonnage was strictly limited, this meant that the shipment of nonessential imports was rendered uncertain or impossible.

An elaborate machinery was also built up for the study and control of enemy trade. Through a widely ramified intelligence system it gained information of firms with enemy affiliation, drew up blacklists, and sought to lessen all trading with the enemy. Allied with this last function was the work of the alien property custodian, whose duty it was to search out, segregate, and administer the property of alien enemies within the United States. Within a year nearly a billion dollars worth of such property was found, much of which was liquidated and transferred to American ownership, the proceeds being converted into liberty bonds and held in trust for the former owners.

The railroads of the United States had never constituted a unified system. Coördination and combination were prevented in part by competition among the roads themselves and in greater measure by legislation. Some six or eight groups of railroads controlled three-fourths of the mileage of the country, but these had effected a fairly distinct regional division of the country

and between them there was little harmony of action. For some years the increase and improvement of track and rolling stock had failed to keep pace with the increase of traffic. When the United States entered the war, therefore, the railroads were fitted neither by organization nor by physical equipment for meeting the enormous tasks which were laid upon them. With the construction of new cantonments, shipyards, and munition plants and the expansion of established industries, new currents of freight began to flow in ever swelling volume, often by unaccustomed channels. As the military program expanded during the summer and fall of 1917, calling for movements of men as well as supplies, serious congestion occurred. As the winter approached the unusual need for fuel, added to the other demands threatened to break down the railroad system. Efforts on the part of the fuel administrator to lessen the pressure by a zone system of fuel distribution and better routing, and the inauguration of a system of priorities by the priorities board proved unavailing, and finally, in December, 1917, the President assumed military control of the railroads, and named the secretary of the treasury as director-general of railroads.

The first effort of the railroad administration was to relieve congestion and secure a more direct and expeditious movement of freight. Subsequent financial legislation permitted the railroad administration to spend enormous sums for betterments and extensions, to increase wages, and to raise freight and passenger rates. Contracts were negotiated with the owners of railroad property for compensation upon the basis of three years' earnings. Under the national administration the operating efficiency of the railroads was increased, freight cars were made to carry heavier loads, cars were freely moved from one road to another and routed over the shortest lines available. Passenger schedules were cut and duplications largely eliminated. City ticket offices were consolidated, and terminal facilities were effectually pooled. By means of these and other changes the service and efficiency of the railroads were greatly increased, and they were made an efficient machine in the general war program.

Among all the problems created by the war perhaps no more serious or far-reaching one existed than that involved in the diversion of labor from normal peace occupations into war activities. The first task that presented itself was that of attracting the necessary labor supply into war industry, and this was done by the inducement of higher wages and also by the threat of conscription of those who did not assume their proper position in the work behind the lines. The keynote was struck by General Crowder's famous "work or fight" order:

"Every man, in the draft age at least, must work or fight. This is not alone a war of military manoeuvres. It is a deadly contest of industries and mechanics. Germany must not be thought of as merely possessing an army; we must think of her as *being* an army—an army in which every factory and loom in the Empire is a recognized part in a complete machine running night and day at terrific speed. We must make ourselves the same sort of effective machine. We must make vast withdrawals for the Army, and immediately close up the ranks of industry behind the gap with an accelerating production of every useful thing in necessary measure. How is this to be done? The answer is plain. The first step toward the solution of the difficulty is to prohibit the engagement by able-bodied men in the field of hurtful employment, idleness, or ineffectual employment, and thus induce and persuade the vast wasted excess into useful fields."

As a result of the withdrawal of so many men from industry into the army, great changes occurred in the position of labor. Many women were attracted into industry, some taking the places of men. Wages were raised to unprecedented heights, partly as a result of scarcity of labor, partly through competitive bidding of the new war industries, and partly because of the general depreciation of money. Old standards and peace rates were disturbed, and new and untested situations were often created. To meet these problems and to secure better organization and direction of the labor supply, several government boards were created. There was the national war labor policies board, whose task it was to formulate a comprehensive policy,

and which was composed of representatives of the departments of labor, war, the navy, and agriculture, of the war industries and shipping boards, and of the fuel, food, and railroad administrations. Parallel with this was the national war labor board, which acted as a court of final appeal in labor disputes. The United States employment service had exclusive control after August 1, 1918, of the recruiting of unskilled labor. Although organized too late for full service during the war, it was of incalculable value in helping to solve the problems of demobilization. Finally the bureau of industrial housing had charge of an activity which was increasingly recognized as essential in any industrial war program. Every shipyard, ordinance plant, and newly built industrial establishment found the construction of houses for the accommodation of workers as necessary as the building of the plant itself. The emergency fleet corporation had secured a specific appropriation for its needs, and in May, 1918, funds were given to the department of labor for similar housing projects throughout the country.

The regulation and control of the activities of a whole nation in the prosecution of a war program necessarily interfered with normal industries. In order to secure the full application of the human and material resources of the country to war purposes, a distinction fundamental and far-reaching was made between essential and nonessential lines of production. To those regarded as necessary, priorities were granted in securing raw materials, transportation facilities, fuel, and labor. By this method the less essential industries were restricted or even in some cases starved to death. War is ruthless, and in many cases the unoffending were compelled to suffer.

Another effective method of control was that of price fixing. Since it was desired above all to stimulate production, prices were fixed at levels that would induce enlarged output. Perhaps the most striking illustration of this was the guarantee by the government of a minimum price of \$2.26 a bushel for wheat. Although a fund of \$1,000,000,000 was set aside to meet the possible loss occasioned by this guarantee, the price was probably not too high to pay as it resulted in the largest crop of wheat

ever harvested in the United States. Another method was the denial to private corporations of the privilege of issuing securities and thereby diverting capital into the promotion of non-essential industries. It has been estimated that approximately \$5,000,000,000 of the national income is annually invested in new undertakings in normal times. Every effort was made to secure the diversion of this surplus income into war production. As time went on not even the issue of state and municipal bonds was allowed to compete with the flotation of war loans. The banks were directed to curtail loans and credit facilities to proscribed activities. Nonessential industries and undesirable consumption were also controlled by export and import regulations and, in some instances, by the prohibition of trading with the enemy.

But not merely were producers and dealers controlled with a view to conservation of the nation's resources and their direction into war channels; the consumer, too, was restricted in the free expenditure of his income. Private consumption during the war was effectually curtailed: by the withdrawal of certain goods from the market and by rationing the distribution of some of the primary necessities; as a result of high prices which placed certain articles beyond the reach of all but well-to-do persons; by a tax policy which imposed particularly heavy burdens on those articles the production or consumption of which it was desired to discourage; and, finally, by the absorption on the part of the government of the surplus funds of the people in war loans.

The articles that disappeared from the market were for the most part imported luxuries which were unable to secure shipping space, and the stocks of which in this country were soon exhausted. High prices were themselves a conserving force, for consumption of nonessentials lessened as the purchasing power of the dollar decreased. To some extent this process was hastened by taxation, but on the whole the burden of war taxes in this country fell upon incomes and wealth rather than upon consumable commodities. The so-called luxury tax was not enacted until three months after the armistice was signed.

Much more effective in regulating consumption was the policy of rationing. Every active belligerent and many neutrals were compelled during the course of the war to ration the food supply. Bureaus of food control were set up, food values tested, substitutes planned, meatless, wheatless, and sweetless days inaugurated, the use of cereals in the production of beverages restricted or prohibited, a nation-wide educational propaganda organized, and recipes providing for the utilization of less scarce forms of food were worked out and distributed broadcast. As a result of this educational work enormous savings in food were effected. The social conscience tended to suppress the purchase of luxuries, and many people completely revised their systems of values.

Possibly the most enduring lesson of the war, as well as one most needed by the American people, has been the inculcation of thrift. This was enforced by some of the methods just described. But it was made a gospel in the appeals to help win the war by purchasing war bonds and thrift and war savings stamps. The billion dollars invested in thrift stamps and war savings stamps in the United States in the year 1918 may safely be assumed to have come from small savings, representing a sum almost wholly diverted from the consumption of goods.

The economic problem presented by the war is clear enough now, but it was but dimly understood at the beginning of the war. The machinery for coping with it was only slowly developed. Social production must be developed to its maximum and directed into the single channel of winning the war. This involved an increase of those things needed for war purposes and a corresponding decrease in the production of commodities that did not contribute to that end. All useless and unproductive spending had to cease. This involved a readjustment of established industries, which was secured only at great cost. The social loss entailed by such industrial readjustment is a serious, though generally uncounted, item in the cost of the war.

But not merely was a reorganization of industry imperative; it was absolutely essential that results be produced quickly. The test of efficiency became the speed with which men and materials could be rendered available. At this point, however,

the insistence that business should proceed as usual proved an obstacle to a quick and effective transition from a peace to a war basis and to that extent delayed the adoption of an intelligent, comprehensive war program. Lack of perspective, incoherent effort, mistaken decisions were responsible for much loss of time. Moreover, the United States was not able at any time to draw upon foreign supplies but had to depend altogether upon domestic resources.

Thus far there have been described only the new governmental organizations and activities called into being by the war, but it would be unfair not to mention also the work performed by the older agencies of the government. First among these, of course, stands the war department. At the time of the entrance of the United States into the war the central organization of the department consisted of various administrative bureaus and of a general staff under the chief of staff. The enormous expansion of the military establishment and the rapid developments in military science during the war necessitated a considerable modification of this organization and the formation of several new services. For the purpose of overseeing and coördinating the different functions a war council was early created. The raising of an army by conscription, its training and care, the procurement of the enormous supplies needed, and other duties on the huge scale demanded, called into being an organization which steadily grew more efficient as the war progressed. New supply services embraced such novel units as the chemical warfare service, the motor transport corps, the aircraft service, and others. The various supply bureaus were supervised by the purchase, storage and traffic division of the general staff, and later were to a large extent consolidated in a more centralized system, with the first assistant secretary of war as director of munitions.

Upon the navy fell the task of protecting the sea lanes to Europe for the safe and successful transport of men and supplies. Owing to the fact that the organization of the department had been greatly improved in the period immediately preceding the war, little change was made in method. But the personnel and material equipment were greatly expanded, while the exi-



gencies of submarine warfare called for new types of vessels, the laying of mine barrages, and the arming of merchant vessels. The personnel of the navy grew from 65,777 men at the outbreak of the war to 497,030 at the end, and the number of vessels from 197 to 2003. Through the allied naval council the department maintained close touch with the allied navies in order to obtain coördination of effort at sea and of scientific operations connected with the conduct of war.

Scarcely less important than the two services just named was the treasury department. The war placed upon it the responsibility of finding new sources of revenue, devising improved methods of taxation, interpreting and administering the new revenue laws, and determining, within the limits set by Congress, the management of the enormous new revenues, the procedure in extending credit to the Allies, the dates, terms, and amounts of the liberty loans, and the best methods of marketing bonds, treasury certificates, and war savings stamps. New treasury branches were organized, of which the most important were: the war risk insurance bureau, which administered a system of marine and soldiers' insurance; the war loan organization to conduct the advertisement, sale, and distribution of liberty loans; and the foreign loan bureau, which was charged with the supervision of loans to foreign governments. There should also be mentioned the federal reserve board (established in 1913), whose powers of control over the federal reserve banks were greatly strengthened during the war, and which guided their policies so as best to serve the interests of the treasury and the public. Finally there was the war finance corporation, which was first created to provide financial assistance to enterprises engaged in the production of war materials or of articles of vital public interest, and after the armistice was authorized to make advances to exporters of domestic goods or to banks financing such exports. It also purchased, on behalf of the treasury department, liberty bonds in the open market. The capital issues committee controlled the issue of new securities.

Other branches of the government also expanded their pre-war organizations to meet the new demands upon them. The depart-

ment of state, in spite of its invaluable services, showed possibly the least external change. The post office department developed such new services as the establishment of a mail service for the military and naval forces, the operation of the telegraph and telephone systems under government control, the execution of certain provisions of the Espionage and the Trading with the Enemy Acts, and similar activities. The department of commerce carried on its war activities primarily through such subordinate bureaus as those of standards and navigation. The department of the interior carried on manifold activities through its regularly organized bureaus, such as investigations regarding the mineral industries of the United States, the materials and methods of gas and flame fighting, and lubricants for aviation purposes, the making of military maps, the readjustment of courses of study in the public schools, and the stimulation of home gardening. The department of agriculture rendered analogous service in the way of locating various types of timber, making food surveys to determine the quantities of food, food materials, and feed in the country, advising as to meteorological conditions in connection with the location of camps and military aeronautics, overseeing the granting of seed grain loans, and inspecting meats and dairy products for the war and navy departments. The work of the department of labor has already been referred to in connection with the national war labor board, which was organized to adjust labor disputes in the fields of production necessary to the effective conduct of the war. Through the industrial housing and transportation service, the information and education service, the training and dilution service, the introduction of women in industry, and other similar services, the department assisted effectively in mobilizing the labor forces of the country for war work.

Coördination in the activities of these various agencies was secured for the most part through frequent personal conferences rather than by the establishment of a formal organization for this purpose. Under the Overman Act, which gave the President broad powers of readjusting the administrative machinery, some changes and transfers of functions were made within and between

departments and other governmental agencies. A sort of clearing house of information as to war activities was obtained with the creation of the central bureau of planning and statistics in May, 1918;<sup>1</sup> but the full development along this line had not been reached when the armistice brought many of the activities to an end.

Not merely was coördinated action among the various agencies of the United States government necessary; even more essential were harmony and unity among the Allies in the conduct of the war. This was realized especially after the entrance into the war of the United States, and to secure this end various organizations were established for economic purposes. The first of these was the inter-allied conference, which was held at Paris, November 29 to December 3, 1917, for the purpose of considering the best means for prosecuting the war. The inter-allied finance council was at this date in process of organization; and there were now formed similar councils on food, for the allocation of stocks of food; on munitions, to make programs for finished products used by the allied armies and for raw materials required for their manufacture; and on maritime transport, whose purpose it was to supervise the general conduct of allied transport and to obtain the most effective use of tonnage, while leaving each nation responsible for the management of the vessels under its control. Other similar councils created from time to time were the allied naval council, the allied provisions export commission (later merged in the food council), the inter-allied petroleum commission, the inter-allied pig tin pool, the inter-allied sanitary commission, and the inter-allied council on war purchases and finance. This last named body was organized to coördinate purchases by the Allies, to serve as a clearing house for information as to allied needs for funds, and to develop a unified policy relating to loans to the various associated and allied nations by the United States and other countries. The United States was represented on all of these bodies, and in some of them, such as the last, occupied a most influential position.

<sup>1</sup> Cf. F. L. Paxson, "The American War Government, 1917-1918," in *American Historical Review*, xxvi, 54, 73-4 (October, 1920).

While mistakes were often made and the machinery creaked and groaned at times, it was gradually improved until by the time of the armistice an effective machinery was at work. Gradually the domestic difficulties of lack of organization, of inexperience, and of ignorance were overcome, and it may be fairly asserted that by the middle of the year 1918, the nation had been organized for war production on a scale which in 1914 would have been deemed impossible. Shipping, the production of food, fuel, manufactures, trade, and transportation were welded together into one mighty machine. Labor responded loyally to the call for an increased output, and consumers with equal patriotism voluntarily restricted their consumption of articles needed abroad.

With the signing of the armistice the powerful national war organization slackened its efforts, so far as it was directed toward destructive ends, and since that time it has been gradually disbanded. There remains, however, a certain amount of control and of expanded governmental activities as a result of the war, some of which will probably persist. New duties have been placed upon the government and new opportunities for service have been accepted, so that the net result of the participation by the United States in the war will be a permanent enlargement of the functions of the national government.

## THE LUXEMBURG CHAMBER OF DEPUTIES

RUTH PUTNAM

Why should legislative proceedings in the grand duchy of Luxemburg be given consideration? It is a country with an area less than that of Rhode Island and with a population (260,000) which would barely fill a second class city—a mere atom in the world's history. Nor has it played an heroic part in the great crisis. Here is the excuse. The discussions in the chamber of deputies have reflected, not in their depths but in their shallows, nearly all the phases of the seething unrest which agitates larger nations, and therein lies the reason for offering a few pictures drawn from the official records of the grand ducal chamber—the German reports as they are sent out daily, translated from the proceedings in French, and the final French *comptes-rendus*. They are miniatures of the processes of readjustment in progress across the Atlantic.<sup>1</sup>

The Luxemburg chamber of deputies is a legislative body that has been evolved by a series of still visible leaps and jumps from the simplest feudal conditions to the assembly recently elected by universal adult suffrage on a basis of proportional party representation according to the system of the *scrutin de liste*. Its modernity is so complete that a Socialist woman has obtained a seat, yet the conservative character of the forbears of the body is not entirely lost to view in the mists of the past.

The old duchy of Luxemburg—a countship until raised to higher dignity by an imperial brother of its count (1354)—lost its early independence in the fifteenth century (1441), and thenceforth shared the political lot of the Belgic provinces under Burgundian, Spanish and Austrian rule. There was one interlude

<sup>1</sup> The official language is French but German is allowed. The reports (*die Kammerberichte*) in German were formerly distributed gratis. There is now a charge of two francs.

for Luxemburg when it passed to France, but that experience was brief and it returned to political association with its Belgic neighbors. But under the shifting fortunes, a certain autonomy was preserved, together with home rule in local affairs, and at an early epoch there existed a small representative assembly to receive the ruler's oath on accession, to assert inherited privileges, to vote supplies and to provide, very reluctantly, extra subsidies for wars.<sup>2</sup> There was no right of self convention but the ruler found it necessary to assemble nobles and cities in order to obtain funds. The clergy had no official share until the sixteenth century. Thenceforward the "estates" was a simple gathering of instructed delegates from three classes of society, who were empowered to report and act upon the sentiments of their principals. They seldom even met *in plenum*.

This type of parliament remained until 1795, when the French republic swept the conquered duchy, renamed the Forest Canton, into its pale as one of the ten annexed Belgic provinces. An attempt was made to brush away feudal adhesions with provincial differentiations and to create a departmental assembly on the model adopted for all French districts. In 1815, the Congress of Vienna ordered this work undone and restored its proper name to Luxemburg, while adding the grand ducal dignity and providing for the representation of its newly appointed sovereign—the king of the Netherlands—in the new German confederation. At this crisis, as before in its history, conservatism in its reaction failed to reject all constitutional changes that had been foisted upon the land. Certain elements of the revolution took root. For instance, clerical representation in the provincial assembly was not restored. In the early nineteenth century the three orders to send delegates were nobles, cities, and country districts. Other elements, too, have lingered to prove the power of French theories over contiguous states.

The troubles of the new grand duke, William I of Holland, with the United Netherlands, finally caused a reduction of the

<sup>2</sup> After the union with the Belgic provinces, Luxemburg was also entitled to send delegates to the States General of the Netherlands, but the autonomy of the local estates was still maintained. The tenth penny was never imposed.

little territory to its present area of 998 square miles (1839). One-half of the ancient duchy fell to Belgium as a province, and the other was launched on an independent career. The governor was appointed by the king-grand duke at the Hague, but Luxemburg was to control her own domestic affairs. The imposed constitution of 1841 settled the type of deputies to be elected to conduct legislation. It was expressly provided that they were, each and every one, to act in behalf of the whole land and not as the mouthpiece of any constituency or class. In 1842, Luxemburg entered the German *Zollverein*. New constitutions, drafted and accepted in 1848 and 1856, were respectively progressive and reactionary. In 1867 novel conditions arising from the provisions of the Treaty of London necessitated readjustment. While remaining in the customs union, though severed definitely from the German diet—where her sovereign had been represented by one delegate for Luxemburg and Limburg combined—neutralised and thus isolated, Luxemburg adopted a new fundamental law with 121 articles which covered nearly all affairs of daily life within the small nation.

This constitution (1868–1919), provided for a limited monarchical form of government under a sovereign grand duke assisted by an appointed council of state in lieu of an upper house, by an elected chamber of deputies—one for every 5000 inhabitants—and by a ministry responsible to the chamber. The council of state is a remnant of French republican institutions. During the nineteenth century changes this body fell into desuetude, but was revived in 1868. The fifteen members are appointed without term to serve in a capacity both judicial and administrative. Seven of the members constitute a judicial committee, *comité du contentieux*, which acts as an administrative court of final appeal. As an adviser to the government, the council has administrative, in endorsing the action of the elected chamber, legislative, functions. In no sense is it aristocratic; the only qualification for appointment, beyond the qualifications for deputies, is five years additional age, and doctorates of law for the seven members of the judicial committee.

The cabinet consists of the minister of state or president of the government, equivalent to the ordinary prime minister, and ministers of finance, agriculture, commerce and industry (one office), education, and public works. At the sessions of the chamber, these gentlemen have seats on the left of the speaker or president, and are bound to furnish all information asked for regarding their respective departments, if notified in advance of an intended interpellation. It may be observed that the order of the day prepared and accepted beforehand, does not exclude informal and vivacious interruption. General business is sifted by means of three sections into which the whole body is divided by lot, the names being drawn from an urn by the president of the chamber, who is elected at the beginning of each session. The lot method is also used for the selection of certain committees or commissions for special purposes. Others are elected.

Any plan leaves openings for possible clashes between executive and legislative authority, and such have occurred in Luxemburg, but during more than half of the life of the 1868 constitution, one important element ensured practical stability. Prior to his death in 1915, Paul Eyschen held the office of minister of state under four administrations and for a period of over twenty-eight years. Standing as he did between the people and successive rulers, three of whom found him in office when they arrived on the scene, it is probable that a fair condition of acquiescent political calm existed in the land on the eve of the war.

In 1890, the grand ducal title had passed from the king of Holland to his nearest male relative, Adolph of Nassau. As fate gave only daughters (six) to this grand duke's son William, the Salic law was formally set aside in 1907, and 1914 found Marie Adelaide as sovereign grand duchess. In the early summer, the regular triennial elections had taken place in several districts (Echternach, Luxemburg district, Remich, Mersch and Wiltz), while a few other vacant seats had been filled, but the new body had not been organized. Out of 53 deputies, a few were new to their work: 4 lawyers, 2 engineers, 1 railway employee, 1 workman, 1 physician, 1 merchant, and 1 landed proprietor. Among their predecessors had been landed proprietors, physicians,



lawyers of various degrees, merchants, and one workman. Probably as far as conservatism was concerned there was not a great change.

When the crucial events of the last week in July, 1914, showed the precarious situation of the grand duchy between the preparing belligerents, Eyschen advised the grand duchess to convene the chamber in extraordinary session. There was no delay. The summons was issued on Saturday and the body was convened on Monday, August 3, by M. Eyschen in the name of Marie Adelaide, with a brief explanation of the situation that demanded the call. After organization, the newly elected chairman, M. Laval, a man sixty-nine years old, opened the session with an appeal to his colleagues to forget all dissensions and to be united in love for their country.

"Let us set our people an example of calmness. Let us implore them to observe the reserve and the dignity fitting for the present hour and advise them to abstain from every turbulent and untimely manifestation, while scrupulously fulfilling the duties imposed by our situation. That will be the gauge of our safety." And he was sure that from the four corners of the land the valiant Luxemburgers would accept his words.

M. Eyschen then proceeded to recount exactly what had happened in the grand duchy during the preceding forty-eight hours, when the world had been breathlessly watching the clouds gather. Their frontiers were closing on all sides. He had turned to the right and the left in vain. On July 31, Belgium, herself in hard straits, had refused to let supplies come from Antwerp, the natural port. Germany was willing to buy the harvests standing on the east side of the rivers, but would not let their owners reap them. Telegrams to Berlin—from Eyschen to the ministers, from Marie Adelaide to the Kaiser—had not prevented the entry of German troops into the defenceless state, nor had they brought any adequate explanations beyond the assertions: "For previous understanding with the Luxemburg government, there was no time in the face of the menacing danger" [France], "and Germany would pay for all damage."

With the full knowledge that all accusations of French aggression were lies, with the plainest proofs to the contrary before his eyes, Eyschen found himself powerless to follow up his protests. He had done all that was "humanly possible." "You know that in Germany as soon as war is proclaimed, civil authority disappears and all affairs, all civil administration, passes into the hands of military authorities. Yesterday when an officer came to see me, I put the question, 'What is your attitude in regard to the Luxemburg government?' He replied that it should be respected. I objected to his placing three (German) functionaries in the post office and he promised to withdraw them. I trust that this consideration will endure and that our administration will not be touched and that our legislation will be left alone."

The minister's statement in regard to the circulation of automobiles was almost naïve. Asked by the German for a personal guarantee for every car, the minister replied that though he might know the owners, it would be an embarrassing matter to vouch for the chauffeurs, and that he really did not know what to do. Then the German general suggested that the cars might all be collected in one place "for their protection so that they should not be destroyed." This produced sufficient laughter among the deputies to make the chairman beg abstinence from approval or disapproval. Nevertheless, in spite of a certain feebleness in his attitude, a feebleness induced by the *impasse* in which he found himself, Eyschen obtained the support of the chamber. Brasseur, leader of the Liberal group, moved in behalf of himself and a "certain number of my colleagues" that:

"The chamber, after hearing the declaration of M. the minister of state, associates itself in the protests made to the German government and communicated to the powers signatory of the Treaty of London, 1867, and approves the acts of the grand ducal government and passes to the order of the day."

A rising vote was taken and not a member remained in his seat. Thus, in 1914, the grand duchy, through the government and chamber, accepted the condition of forced acquiescence in German invasion unanimously, having simply registered formal protests.

When the opening of the chamber took place on its regularly appointed Tuesday in November, Marie Adelaide came in state and made her annual address. After touching on the heartrending aspect of the monstrous war, and the formal action taken in August, she declared:

"Our rights remain intact although they have been slighted. The pledge has been given that the damage will be repaired. . . . The country does not consider itself freed from the obligations imposed by the international treaties. Our protest exists and we will maintain it in all its tenor."

M. Brasseur, the Liberal, replied to her address, assuring her of the loyalty of the chamber and the world, of the stability of the grand duchy, free and independent.

On her part Marie Adelaide was "happy to know" the perfect unity of views existing between the crown and the elected representatives of the country. That was on November 17, 1914. The land had submitted to force but it was united and meant to remain so in the face of a dire necessity. Still it seems a not unwarranted inference that there was a partial if not universal belief that the German arms were to be victorious. Ten months after the armistice, a deputy, Schaack, said in the chamber: "Had Germany won the victory, the grand duchess would still be on the throne but the land would be a German confederated state and the people would be under the 'boot.'"

The assertion was denied indignantly and the speaker told that he did not even believe it himself, but it has some show of probability. Nor does it appear that Eyschen would have resisted the tendency towards closer German affiliation, and he was actual executive and adviser of the young sovereign. That statesman knew his Europe, as it appeared to the eyes of many observers on the borderlands, and he knew international politics, after nearly thirty years in public life during the rise of Germany. Within limitations natural to his class he had experience and knowledge. The exhaustive article on "The Political Law of the Grand Duchy of Luxemburg" was written by him for Marquardsen's series of handbooks on public law. Moreover he represented the grand duchy at the Hague conferences of 1899

and 1907, and had taken larger part in the discussion of the rights of neutrals than delegates from more important states. He knew Berlin and the men surrounding the Kaiser. If he thought that the ultimate fate of his own land might be incorporation into the German Empire, it was because he had followed the trend of commercial affiliation closely and had reason to assume an inevitable consequence of business connections. Eyschen's intimate knowledge of the theory of neutral rights did not greatly help Luxemburg, but probably his acquaintance with the German personnel aided him to soften some of the inconveniences of that first German occupation, passage, and requisitions. The amount paid by Germany within the first eighteen months of the war is estimated at \$250,000. That there was any payment at all is probably due to Eyschen.

The real sentiment in the country during 1914-15 is hard to gauge accurately, in spite of the official dictum that government and people were at one. If the majority were pro-ally from the beginning, a lack of belief in their victory led to some concealment of preference. But there were many and potent proofs of warm sympathy. A Munich paper declared that Luxemburgers were so ungrateful for Germany's kindness that 8000 men had joined the ranks of her foe. This was Teutonic exaggeration, but before the war was over, it was true of more than one-third of that number.

The calming influence of one hand, steadied by long experience, free from ministerial crisis, did its work for a time; but Eyschen's death in October, 1915, threw the governmental machinery completely out of gear, and opposition to his general conciliatory policy gained ground in the chamber. After some little delay, Hubert Loutsch took the portfolio, but at once found himself at odds with the deputies; a vote to test confidence resulted 26 to 25 against him and he resigned. His successor, Vannerius, held office for less than a month, and then a Catholic-Liberal-Socialist cabinet was formed with Victor Thorn at the head. He received a vote of confidence 39 to 1; but it was soon plain that the old order of a stable, fairly acquiescent government was gone forever. The spirit of the land had changed.

Socialists and radicals, to be sure, were no new apparition among the grand ducal deputies. Before the crisis, several had been elected and seated without any such trepidation as was excited by their party name in America, and their voice has grown louder since 1918. Thorn did not prove a staying power and he yielded his office to the director of finance in his cabinet, Léon Kauffman, who managed to keep his post in the face of much unpopularity, for over a year; but his identification with the betrothal of Antoinette, the fourth princess of the grand ducal house, to Ruprecht of Bavaria, forced his resignation. This event took place in the summer of 1918, when German defeat was sure and pro-ally sentiment dared to manifest itself boldly. Again there was an election, and in spite of the increasing discontent and radicalism that was surging everywhere, the conservative Catholic party still showed the largest following.

One of their number, Dr. Reuter, a Luxemburg lawyer, became minister of state. Born in 1874 and one of the four youngest deputies, he represented Luxemburg country and Wiltz in the chamber. He is of a naturally conservative temperament, yet of a nature to prefer a middle course rather than reactionary conservatism. Upon his shoulders fell the burden of meeting confused conditions following the armistice.

The new chamber of 1918 was divided as follows: Catholics, 23; Liberals, 8; Socialists, 12; Independents, 5; Democrats, 5.<sup>2</sup> It was an important body, for it was to reform the constitution, and there were those among the deputies who demanded far greater reforms than mere amendments to the old fundamental law. Europe was turning republican, and the party of the Left declared that there was no reason to retain any dynasty at all, let alone one whose chief had been very friendly with the now despised Germans. There were grumblings during November, 1918, but they came to nothing, calmed by the presence of new allied troops. Marie Adelaide stood with General Pershing to review the incoming Americans in a most friendly manner; but there were intimations that American officers had better not be too willing to receive favors from the court party if they wished

<sup>2</sup> The figures are taken from *La Patrie Luxemburg*, Paris, Aug. 15, 1918.

to please their French allies; and M. Pichon intimated very plainly that the grand duchess was *persona non grata* to the French government. Two or three times the rising discontent was smoothed down. On December 13, the chamber requested the sovereign to abstain from any executive act. The motion was carried 35 to 2. A few days more and a fresh crisis came. On January 9, 1919, there was a mutiny of the troops—the small force of volunteers charged with policing the land—while vehement cries were heard that a republic must be proclaimed and the dynasty abolished once for all.<sup>4</sup> The movement was characterized by the various features of greater revolutions, but it was all on so small a scale as to be almost theatrical.

The Catholic party realized that there was no possibility of retaining Marie Adelaide in the face of the determined demand for her removal; but they did succeed in saving the dynasty,

<sup>4</sup> There were many broadsides issued by the various groups, each proclaiming itself the real type of patriot, able to save the country. The following was addressed to the people in the north by two deputies who had recently separated themselves from the Catholic party:

*Appeal to the people of the Oesling*

"Our volunteers have mutinied and ranged themselves in the service of the Revolution. Decorated with red emblems they march through the city, stir up the population and attempt to occupy the public buildings. Yesterday afternoon they seized the issue of *Luxemburg Wort* at the station and burned it all in public places. We learn from reliable sources that the *Clerfer Zeitung* is to suffer the same fate:

"Our army does not consist of the entire armed population as is the case in other lands, but of 150 twenty-year old youths who have volunteered in the hope of getting good public positions later.

"Oeslingers!

"Will you let these 150 green boys suppress and rob you of your civil rights? Under no condition! We must meet force with force! Chase these rebels in uniform out of your frontier villages. Take away their uniforms and arms, for they are misusing them to rob peaceful citizens of their rights and to drag the state into misfortune! Farmers, workmen, and citizens of the Oesling be ready to hasten to the capital at the first call and help law and order prevail. Meanwhile organize in your villages and suffer no fire brand in your ranks. Down with the red Revolution at whose head stands Michel Welter, Oesling's foe. Long live Luxemburg, free and independent!"

TH. BOEVER. P. PRUM.

"Independent Oesling Deputies."

January 9.

although when the chairman, Altwies, followed by the whole party of the Right, marched out of the chamber, it looked for a space as though the grand duchy had received its death blow. Emile Mark, a Socialist, organized the remaining deputies as a kind of rump parliament, and actually proclaimed the republic. It had an existence of only half a day. Altwies regained control, proclaimed the abdication of the grand duchess, announced the automatic succession of her sister, Charlotte, according to the constitutional regulation of the succession, dispatched a committee to the chateau of Colmar Berg to receive her oath (January 15), and the immediate crisis was past. The precise story of the events of the days, January 8-15, with all the influences that worked openly or in secret, is not yet told. This much is plain. True to her past history, Luxemburg's ingrained conservatism predominated partially. The old order held its own momentarily but it yielded to the idea of a referendum as arbiter of its maintenance—itsself a novel measure.

The revision of the constitution began in January, 1919, proceeded throughout the winter and spring, both radicals and conservatives obtaining certain victories. Article 32 related to the seat of state sovereignty and was the first to be altered. "The grand duke exercises the sovereign power conformably to the present constitution and the laws of the land," was replaced by: "The sovereign power resides in the nation. The grand duke exercises it conformably to the present constitution and to the laws of the land. He has no other powers than those formally attributed to him by virtue of the constitution itself, all without prejudice to Article 3 of the present constitution." This article 3 provided definitely for the succession and for Nassau family rights. Thus so much was gained to the advantage of the dynasty.

Article 37 gave the grand duke power to make war and treaties, giving such information to the chamber as the safety of the state permitted. The revised article 13 reads: "The grand duke commands the armed force. He makes the treaties. No treaty is effective without the assent of the chamber. Secret treaties are abolished. No cession, no exchange, no addition of territory can take place except by virtue of a law."

Article 52 on the suffrage was radically changed. As amended it reads: "The deputies are elected on the basis of universal and simple suffrage by ballot, according to the rules of proportional representation, conforming to the principle of the smallest electoral quotient and to regulations to be determined by law."

"The country is divided into four electoral districts. South—Esch, Capellen; Centre—Luxemburg city, country and Mersch; North—Diekirch, Redange, Wiltz, Clervaux and Vianden; East—Grevenmacher, Remich and Echternach.

To be an elector it is necessary:

1. To be a Luxembourgeois or Luxembourgeoise.
2. To enjoy civil and political rights.
3. To be 21 years old. [Twenty-five had been the age limit for tax paying males.]
4. To be resident in the grand duchy.

"To these four qualifications must be added those determined by law. No condition of tax payment can be required. To be eligible as deputy one must be 25 years of age, and in addition possess the three other qualifications.

"The electors shall be called upon to declare their preferences by way of the referendum in the case and under the conditions to be determined by law."

Deputies living in the capital have had no compensation. Those from a distance received first five, and since 1898, ten francs a day for each day of presence. Article 75 as amended reads: "Members of the chamber of deputies shall enjoy an indemnity of not more than 4000 francs per annum. They shall also have a right to indemnity for displacement. Details relative to this double indemnity shall be regulated by law which shall be retroactive for the session of the constituent assembly."

These four articles—32, 37, 52, and 75—duly ratified by the council of state and endorsed by the young sovereign, were published on May 16, 1919 and became law.

Since that time practically every adult in the land, considered as true Luxemburger, has been called upon to express an opinion on the composition of the legislature. According to the election law a notice is sent to all voters by a town official. They are



thus saved the duty of registration and have their legal ballot in hand when they go to the appointed polls. More than that, a fine is incurred for failure to vote, except in case of a referendum, where balloting is optional.

Coincidentally with their efforts to set their house in order, the deputies watched the Paris peace proceedings most anxiously. Meantime, the powers failed to endorse Luxemburg's change of rulers, and Charlotte remained simply an acting (under orders) but unrecognized ruler, Belgium alone sending a diplomatic envoy to her capital. The grand ducal attitude, however, had begun to be *Timeo Danaos et dona ferentes*.

Might not republican France, unable to assimilate a grand duchy, be a safer associate in the customs union? In order to obtain a fair statement of terms and to show the real position of the people, it was decided to hold the proposed referendum on May 4. At that moment, there might still have been a majority for Belgium, in spite of waning sympathy. But an intimation came from Paris that the moment was not counted favorable for a plebiscite of any kind. Dr. Reuter yielded the point and the election was postponed, to the special annoyance of the opposition.

About a week later a portion of the preliminary draft of the Peace Treaty appeared in the papers. This was the first view obtained by Luxemburgers of Articles 40, 41, and 268, of the Treaty of Versailles, all of which had to do with the severance of the grand duchy from German control. A Socialist deputy, Joseph Thorn, seized the occasion to attack the government with considerable asperity. He read the articles aloud, and then proceeded to declare that if these had been adopted without a hearing being given to the Luxemburg government it was a proof of the latter's complete incapacity. If the minister of state had been informed and had failed to take the public into his confidence, the proof of incapacity was still plainer.

Applause came from the Left and protests from the Right. Thorn continued: "If the government obtained a hearing and refused to make an explanation, it is a behavior which I have not hard enough words to characterize."

The colloquy that ensued between Dr. Reuter and his critic showed the minister in a difficult position. It may be inferred that he had not been fully warned of the proceedings, and his statement that all neutral lands were in the same box simply produced a storm of protest. Thorn continued: "We are forced to ask whether we have any representative in Paris or Brussels. Did they think you were not in the running, or did they consider us simply as *quantité négligeable*?"

*Dr. Reuter:* "I repeat. All the neutral lands were in the same case?"

Thorn proceeded to declare that Switzerland would never have been treated in this cavalier fashion, and that he was justified in informing people that their representatives in Paris did not know what was going on, and that the Entente had never shown them the complete text of a treaty important to their land in the highest degree. "The question now is whether our representatives are in a position to furnish an explanation."

*Reuter:* "A few days time must be given."

*Brasseur:* "It should have been done long ago."

*Joseph Thorn:* "To like right there is like duty. I cannot understand why Luxemburg should renounce her neutrality and why anyone in Paris should meddle with this change of our status. As far as I am informed, Switzerland is negotiating her neutrality with France. We are negotiating with no one. No one addresses a word to us, and that is the reproach I make to the government and on this ground I call it incapable to direct the economic and political future of the land and to bring it into a safe port." (Violent protests from the Right.) Thorn proceeded further to declare that they could not talk of their independence when their customs union was discussed at Versailles.

*Reuter:* "In Paris they insist on the abolition of our customs union with Germany but it is at our instigation."

*J. Thorn:* "That is a matter that only concerns us. What business is it of the Peace Conference whether we quit or maintain our customs union with Germany? (Interruption.) While they are discussing the fate of this land at Versailles you have the

face to come to us with the statement that you have nothing to tell us. In my opinion you are, under these circumstances, incapable of saving the future of this land and we refuse to give you the confidence you ask for."

*Reuter:* "If you did not have this pretext you would find another."

*J. Thorn:* "You are leading the land to ruin."

*Reuter:* "And you would lead it to bolshevism if you had the power as you recently declared in a meeting at Esch."

*J. Thorn:* "To socialism I said."

*Reuter:* "No to bolshevism. In a public meeting at Esch you allowed a speaker to talk about the entry of bolshevism into our land and you said you were ready to receive it with open arms."

*J. Thorn:* "I never said so."

*Reuter:* "You said so."

*J. Thorn:* "I deny that formally. I never declared myself for bolshevism. (Violent interruptions.) In Moscow at least they respect some rights, in Versailles none."

*Reuter:* "Declare war (interruption)."

Thorn was finally silenced, but Brasseur, leader of the less radical Liberal party, proceeded in much the same vein:

"I am convinced that our government, in the most crucial hours, has nothing to communicate while news of the greatest importance to us is going the rounds of the foreign press. We have a government on our hands that is not in a position to inform the public of the most weighty things."

*Schiltz:* "Would you be any more so if you sat on the government bench?"

*Brasseur:* "If I were in your place I would certainly not serve the dynasty which at the present is directing the fate of the land." ("Very good"—Left. Protests—Right.)

*Reuter:* "The people are masters of their own fate. Give them the word through the referendum."

The request to postpone the election arranged for May 4 struck the deputies, according to M. Huss like a "bolt from heaven." There was an increasing sensitiveness in regard to any interference in grand ducal concerns. M. Huss, conservative

Catholic leader, took occasion to answer an American's suggestion written in 1918, that Belgium was the neighbor with whom the grand duchy should naturally affiliate, owing to the long historic connection between Luxemburg and the Belgic provinces. He declared that no foreigner could understand their needs, that the situation was new and must be settled entirely as a question of the present. Every one had sympathy with Belgium in her misfortune at the outbreak of the war and undoubtedly she had been disappointed at the result of the Peace Conference. But that was no reason why Luxemburg should be sacrificed to her as a compensation. "If we have lost sympathy with Belgium it is on account of an unskillful propaganda. Every one knows that a considerable part of the agricultural population of the land was in sympathy with their Belgian brothers who had suffered so keenly. Dr. Hoffman was offered thanks by King Albert for his efforts in their behalf. But since our brief meeting with the Belgian deputies, the fear of Belgium has increased instead of diminishing. The referendum ought to be held as soon as possible."

The debates during the summer of 1919 showed that the popular trend grew more and more anti-Belgium. Personal feeling ran high. In the chamber there were accusations of unfair dealing. On July 17, for example, Hoffman, a Catholic member from Redange, complained that important legislation was frequently carried through after 5:30 p.m. when the out-of-town deputies had left by the last train. "We are not professional politicians. We have our own work at home and must perform it. Advocates can pursue their calling here in Luxemburg. We cannot. Why should we not begin promptly at 3 p.m.?" He also suggested that all ballots taken after half past five should be annulled as not giving a just return of the chamber's sentiments. In the course of his remarks he intimated that politics played a large part in the hour at which a vote was taken. Chairman Altwies reprimanded him with: "You ought not to cast aspersions on the intentions of your colleagues;" and there were various angry declaimers of the slightest intention to be unfair.

*Schaack* (a deputy who was not a candidate in 1919): "M. Hoffman asserts that we are here for our constituents. No, we represent the land—not our constituents." (The remark betrays the fact that the ancient idea that the legislators were delegates appeared occasionally.)

*Hoffman*: "That is understood of itself. The voters are the land."

*Hemmer*: "It should be decided not to take any vote after 5:15 p.m., so that every one can go home."

*Diderich* (Radical): "The system of voting after 5:15 was inaugurated by the party of the Right to pass motions that they thought pressing. In this manner were carried the accession of the grand duchess Charlotte, the referendum and the election law. The party of the Right demanded the vote on these motions after 5:15, and now they are complaining about the very system they inaugurated."

*Hoffman*: "The chamber made the decision."

*President Altwies*: "As president, I assert that the decision not to take a vote after 5:15 p.m. was not a party move but was at the request of the deputies who had to take the northern train in order to get home, and the chamber approved. No party was to blame for it. Last week we voted daily up to six o'clock, but the motion not to vote after 5:15 was passed in the interest of the deputies."

*Kieffer*: "If we met at 2 p.m. we could rise at 5."

*President Altwies*: "That was suggested, but the Esch deputies said they could not get here at 2."

*Many voices*: "That is not true."

It was finally decided that the roll should be called at 3:10 precisely. But punctuality seemed difficult of attainment. In September, 1919, day after day the writer often waited in the visitors' gallery until nearly four o'clock before the session opened.

The discussions in July and August were directed mainly to details of the budget and the workmen's indemnity. The surplus as existing in 1913 had changed into a large and growing deficit. An optimistic note is apparent in the statements made by the minister of finance, Neyens, while the magnitude of his

figures caused deep apprehension in the hearts of many of his hearers. Minister Neyens said rather jauntily that Laval had rated the national wealth at 3,650,000,000 francs in 1916, making the per capita quota 14,000 francs. A loan of 75,000,000 would tax each at 300 francs, "which with the individual wealth of 14,000 is not disquieting."

De Villers (Right) objected that the property cited was imaginary and not realizable, and another deputy declared that a cry of horror rang through the land when the finance minister with shameless frankness announced that they came out of the war with a deficit of 145 millions. Neyens corrected his figures to 105, but the speaker proceeded to doubt whether 180 million would spell the whole debt.

Certain deputies urged: "We must look to it that we do not leave all our debts to the next generation." To the assurance that posterity could properly bear its share of the world war came the question: "How do we know that they will not have their own war problem to grapple with? There may be a worse war in twenty years. It would be terrible if they had to bear their burden and ours too. If you examine the articles of peace you will find that they are articles of war."

Reproaches about the debt brought out the statement that they were simply in the same case as all neutral lands. It was the war. Holland raised four or five loans, Switzerland eight or nine. At various stages in the debate suggestions were not wanting that many Luxemburgers had grossly profiteered during the hostilities, and that it was they who should be heavily taxed. "Any one can point out many a man who hardly had a decent hat on his head before the war and now had a fine villa over that same head." ("True"—from several benches.)

Kriepe (Socialist) remarked that the constitutional assembly of 1919 would be entered in the annals with a black mark for its financial muddle. "Politics are at the bottom of everything and if a change does not come at the next election the land will plunge headlong to ruin." (Approval from several benches.)

Nevertheless, in spite of financial complications, the government proceeded to accept fresh expenditures, assuming responsi-

bility for the difficulties that individuals found in meeting the high cost of living. A special credit of 15,000,000 francs was voted to provide a bonus to every workman in the land. Discussion was hot and verbose. On August 12, one deputy, Lacroix, said: "For my part I consider it my duty to oppose the motion, for it is unjust, anti-social and menacing to the public finances. What is public opinion on the subject? Let us be open. I am not talking of my personal judgment. I express the opinion of many electors, highly respectable people. They say that, at the moment when we are appealing to new voters and proposing a referendum that has two sides, political and economic, this bill is a mere political election maneuver which will cost the land large sums if passed. That is what the public thinks."

Prüm, an Independent, approved these sentiments, but the Socialist Diderich objected to blocking the measure by the fear of electioneering. Social solidarity demanded some benefit for the war sufferers. "The state was sometimes forced to act. When the state had changed the depreciated German notes for Luxemburg treasury bills, worth double, a royal gift was bestowed on every one who had saved German money during the war,—the large farmers and merchants. That benefit accrued to the well-to-do people even though their profit was not invariably just. The laboring class had no share in this. It is therefore natural and just that the state should now come to the aid of the poor and, under another form, give them an advantage which it had already adjudged to those who had, under the state's leniency, enriched themselves at the cost of small folk. The universal high cost of living presses hardest on that class for whom the bonus is intended." He added incidentally that the whole situation was due to the utter imbecility of the government. (Laughter on the Left.)

*Gen. Director Liesch:* "It is laughable."

*Diderich:* "You find everything laughable and you do nothing but laugh."

*Liesch:* "Sometimes one laughs to avoid tears. Then I have to laugh at your arrogant self-conceit."

*Diderich*: "It does not equal yours which is unbounded."

Diderich rambled on at length in justification of his vote for the bonus and was warmly approved by the Left. He was followed by Liesch who replied to his assertion that the government showed a lack of energy.

*Gall*: "But it is true."

*Probst*: "He has the right to say so even if he is wrong."

*Liesch*: "And I have the right to protest."

*Probst*: "Certainly even if you were wrong." (Merriment.)

*Liesch*: "No, then I would not protest."

*Probst*: "We shall come to asking the government's permission to open our lips next."

*Diderich*: "Yes and submit our speeches for approval."

*President Altwies*: "At least allow the government to utter its opinion."

Thus the discussion dragged on, punctuated by warmth and acrimony, and was still in progress on August 13, when a large body of workmen—the number was variously estimated from four to twenty thousand—made their way from Esch and surrounded the chamber of deputies demanding the passage of the act that had been favorably reported by committee. Socialist deputies went back and forth between their colleagues and the crowd, whose unruly proceedings alienated many of their sympathizers. The ultimate passing of the bill was pledged; but even that was not sufficient to calm the passion of the crowd. Stones were flung wildly, smashing over eighty windows in the chamber, and the deputies ran to shelter. Again, however, the menacing danger of revolution was averted. The chamber adjourned to September, and on August 14, the Feast of the Assumption of the Virgin, the only visible work in progress in the capital was that of the glaziers repairing the windows of the chamber of deputies!

The final passage of the act was on September 10; it was signed two days later by the council of state, and by the grand duchess on the 20th. The beneficiaries are industrial and agricultural workmen, domestic servants, artisans working for themselves if they do not have more than one apprentice, injured



persons on half time, widows, and orphans under fourteen, of persons who would have been entitled to the bonus. It was necessary to prove nationality or ten years uninterrupted residence in the land, wages of less than 6000 francs, for the year 1918, and 165 days of work, days of illness counted as work days, between January 1 and October 1, 1919. The sum allotted was from 250 to 400 francs each.

The next subject for the consideration of the chamber was the long talked of referendum; and the sessions of the last full week in September were occupied with discussion of governmental policy and questions pertaining to economic relations. Many points, already freely threshed out, were fought over anew. Dr. Reuter was again called upon to justify the subordination of the government to the conference at Paris, but it was evident that the rampant revolutionary spirit of midwinter had calmed down. To be sure a sneer was audible from the Socialists when the Liberal, Brasseur, reproved the minister of state for permitting the powers to ignore Charlotte during her nine months of *de facto* sovereignty. He was reminded without over civility, that he had not always been so tender of the dynasty. It was intimated, moreover, that he had used the word *Bôche* concerning the sovereign, an assertion denied indignantly amid some confusion of tongues.

But in reality, long before the election day, there was little doubt about the retention of the dynasty. Straw votes taken in organizations of various types had showed, moreover, a preponderating sentiment in favor of economic affiliation with France rather than with Belgium and this vote was to be advisory only, not decisive. Farmers were especially emphatic, as to their desires. From France, they wanted fertilizers and protection; from Belgium they feared competition and an influx of Argentine wheat through the free trade Belgian ports. Yet, a wish for affiliation with French customs was less emphatically asserted than the determination to retain the dynasty and Charlotte. There were several thousand less votes cast for the former question than for the latter. Out of 127,775 on the register,

over ninety thousand voters came to the polls.<sup>5</sup> The Socialists had proposed to refrain from voting, but there was a split in the party on that point. One woman, asked by the writer if she had voted, replied that she could not because her husband was a Belgian, but added: "I would not, anyway, it was all a mere *plaisanterie*." She refused any further explanation of the statement.

The government had, however, been so well supported in upholding the dynasty that it was freer in its action. The acceptance of the young duchess led to the display of her portrait everywhere as a symbol of her acknowledged sovereignty. Moreover, the backing given to his policy decided Dr. Reuter to hasten the renewal of the chamber, inevitable in any case within a brief time, and a general election was appointed for October 26.

Six sessions of the old chamber were held between October 3 and 17. Possibly it was mere chance that the discussions turned on topics peculiarly interesting to large classes of voters, new and old. Nor was the referendum finished with its apparent settlement. Certain deputies were aghast at the confident reports printed in the French press, and implored Dr. Reuter to explain that popular preference alone had been tested in the ballot box. The minister replied that journalistic inaccuracy was not his concern, and that any further explanation would be an insult to the intelligence of the Peace Conference and to the chancelleries of France and Belgium, who perfectly comprehended the true character of the election. Especially long were the discussions on the disposition to be made of the railways, and the fervid espousal of employees' rights ended in a motion that

<sup>5</sup> The vote on the internal government was as follows:

For retention of the Grand Duchess Charlotte.....	66,811
For retention of the dynasty with another grand duchess.....	1,286
For introduction of another dynasty.....	889
For a republican régime.....	16,885
Blank and invalid ballots.....	5,113

On the question of economic union:

Union with France.....	60,135
Union with Belgium.....	22,242
Blank and invalid ballots.....	8,607

a committee of them should be consulted. It was defeated, 22 to 20. A proposed rise in teachers' salaries evoked flowery harangues on the simple justice of adequate recompense for moulding the young minds of the nation and of equal pay for men and women. The comparative cost of living in town and country, even to the items of keeping a cow and the cost of female head gear, were wrangled over, as well as the justification for half rates to the Catholic sisters with their restricted desires for mundane things. Little final action was taken on any subject before October 26, when the constituent assembly ended its stormy life amid cries of "*Vive la grand duchesse*" on the Right and "*Vive la république*" on the Left. There were more voices in the former, but the latter cry had the last word.

The result of the election proved that extension of suffrage had actually reinforced the conservative party, and the fresh strength given to the prime minister was immediately available, in the session opened on November 4. The returns from the trial of proportional party representation by the *scrutin de liste* were as follows: The Right (conservative Catholics), 27; Socialists, 9; Liberals, 7; Independent nationalists, 3; Free peoples' party, 2. After the publication of the above figures there were some corrections, but a conservative majority remained assured as the reapportionment had substituted 48 for the 53 seats of the previous session.

As soon as the routine of reorganization was completed, with the former president, Altwies, again in the chair, Dr. Reuter opened formal business by announcing that the marriage of the grand duchess to Prince Felix of Bourbon Parma was to be celebrated on November 6. Derision was heard from the Left at his phrase, "The country is delighted at the news and shares in the happiness of the grand ducal family;" but this did not deter him from proceeding to request a special act of naturalization for the bridegroom and thereby evoking a storm of criticism more definite than laughter.

The Liberal, Brasseur, complained that if time had been allowed for a proper consideration, "the grand duchess and her fiancé would have been spared the painful discussion of today.

If it be known abroad how easily the Luxemburg chamber can turn an Austrian into a Luxemburger, I fancy that there will be much amusement." The speaker objected especially to the lack of all usual documents, and to the eleventh hour application.

There were many grades of opinion. A committee was appointed to report at once on the matter—a proceeding that had difficulties, as an added charge to prepare an address to the bride caused an immediate resignation of one member and the substitution of another. The objection that the prince fought in the Austrian ranks was answered by the assertion that the president of the French republic himself had received him and that there would be no international complication on that account. Blum, a reëlected Socialist, took the stand that in all countries where a female sovereign was legal, there were special restrictions on her marriage, and that the only reason why they did not exist in the laws of the grand duchy was that female succession had never been contemplated until the abolition of the Salic law in 1907, simultaneously with which regulations about the matrimonial alliance of any grand duchess should have been made, but were not. Told by August Thorn that he was medieval, Blum replied that, on the contrary, he was completely up to date, and international difficulties might soon loom large on the horizon to prove it. Besides, all that they knew of a complaisant French attitude towards Prince Felix was hearsay. The chamber had asked for definite information and had been refused. The Socialist, Joseph Thorn, gave a long harangue on the evil principle of hereditary sovereignty. He was quite willing that Charlotte should wed the man of her choice, but he was not willing to permit the marriage to be an occasion for overriding naturalization laws. He was an internationalist himself, but special legislation was abhorrent to him. "*Vive la république*" made itself heard several times in the course of the debate. Blum and Mme. Thomas, the woman deputy, and three other Socialists moved to suspend the project of the prince's naturalization until the powers had renewed diplomatic relations and to submit that same naturalization to a referendum. Both motions were lost. The committee reported favorably and the measure was

carried 25 to 21. A second reading dispensed with, the bill instantly became law, and Prince Felix was a Luxemburger when he was married to the grand duchess on November 6. That France was not inclined to object was shown by the fact that when President Poincaré visited Thionville in February, 1920, to decorate the city with the legion of honor, the young pair crossed the frontier to greet him and toasts offered at the banquet were eloquent with Franco-Luxemburg amity.

The chamber became immediately absorbed in domestic concerns. Could the gratuitous distribution of the daily reports of the proceedings, the *Kammerberichte* or *les comptes-rendus*, be continued in the face of the price of paper and the increase of the recipients to 130,000? A proposal to give one copy to each household was the signal for dissertations on the rights of servants and on the educational value of the reports. "On the morrow of the bestowal of universal suffrage the suppression of free information on governmental action is a crime," declared Brasseur, who was warmly supported by some, while others jeered at the idea of their utterances being "educational" to any public. Others urged that the reports were simply used for wrapping paper, and again others maintained that the newspapers were all partisan and that the reports alone gave the literal truth of the transactions. The recommendation of a two franc subscription was carried, however, in the face of the clamorous defense of popular rights, and a protest against "candle paring economies."

A more important question, already fought over meticulously during the preceding year, was the transfer of certain industrial corporations from German to allied stock holders. They had been, it was asserted, dangerous, forming "a state within the state." In settling the purchases many and various were the complications involved; indemnity to the grand duchy for the injury caused by the presence of German property on Luxemburg soil; a just price in the face of fluctuating exchange; the protection of the employees, etc. It was the last named that afforded some of the newly elected labor Socialists themes for their speeches: "We are the Labor party, you are its betrayers."

"Is that any assurance for the workman?" "You are defending the dictatorship of capital." "Capital has become so powerful that not merely the proletariat will be at its mercy, but entire populations as is already the case in this country today." "Only the suppression of the capitalist régime where interest rules and its replacement by another social order where the collective interest is sovereign, will disembarass humanity from the injustice prevailing today." "As soon as capital is at stake, the bourgeois element is solid." These were among the darts hurled at the supporters of the terms proposed by minister Neyens, as acceptable for the sale of the most important industrial plants.

In connection with the sale the workmen were allowed to state their own demands, a list of eleven. They were: (1) recognition of their unions, (2) sanitary improvements, (3) weekly payments, (4) 100 per cent increase for over time work, (5) vacations, (6) apprenticeship as before, (7) revision of salaries, (8) equal pay for men and women, (9) advancement of workmen to higher positions, (10) no reduction in numbers or in wages during a crisis, (11) a forty-eight hour week. Minister Neyens reported that these had been submitted to the purchaser who had replied that certain of the points should be studied carefully, 4 and 10 could not be considered, and the others were granted rather doubtfully.

"There you see what we get," declared Krier, "nothing at all."

In his final summary of the negotiations, Neyens defended his course in detail, being especially emphatic in his denial of the charge of graft. Something had to be concluded before November 15, or the men would have been cast adrift; he had done his best. The sale was accepted, 27 to 12, four deputies abstaining from taking any part in a transaction which they disapproved.

A month later Joseph Thorn declared:

"We have no trust in the administration, and the late events in the chamber strengthens us in the conviction. From the sale of Gelsenkirch and Differdingen, we can see that the government

is not informed about what goes on in the world. It has no knowledge of the wishes of the laboring classes which tomorrow will be the orders. Further the government rests on an artificial majority of the population behind it. Trusting in this deceptive majority, the government pursues reactionary methods."

Yet in the face of all this bitter opposition, the same government remains in power. The excerpts given show what the trend of the debates has been as well as the subjects discussed. The grand duchy does not worry about a navy, but with that exception nearly every trouble harassing other countries stares her in the face while she suffers from some anxieties peculiar to herself. "Fifteen months since the armistice and no economic alliance concluded yet," was a reproach forced upon Dr. Reuter's ears with tedious repetition, the number of months only being changed. He was told that he might as well admit that his referendum policy was useless. "You (Dr. Reuter) played a dangerous game. You staked all on one card through the referendum and you are not yet sure whether it were a trump!" In March a special deputation went from the chamber to Paris for an interparliamentary conference, and the cordial reception of the Luxemburgers added a new stone to the proposed alliance, while Belgium's participation as a third party does not seem as impossible as it did. Meanwhile, the state of the grand ducal finances has become very involved, and the latest reports, received June 1920, are filled with an exhaustive statement of their conditions and a proposed solution.

Recently the number of cabinet members has been increased to six, with a different distribution of duties. Two ministers have been appointed as *chargés d'affaires* at London and Washington.

In the midst of republican Europe the strange spectacle is presented of two women, one Catholic, one Protestant, sprung from the ancient Nassau family, almost the last of the race, held in hereditary sovereignty by compromises, by a policy much like the mediating course used by the great Nassau, William the Silent in the sixteenth century. He was too far ahead of

his age to be successful. Under the aegis of his "*Je maintiendrai*," Queen Wilhelmina retains her seat on the throne of Holland,—teeming though the land is with advanced ideas. Grand Duchess Charlotte, with the same family devise, retains her semblance of sovereignty in Luxemburg simply because she is the most available symbol for fulfilling the people's wish to "remain what we are." "*Mir welle bleiwe wat mir sin*," is still the cry.<sup>6</sup>

<sup>6</sup>In addition to the official reports of the chamber of deputies the authorities used are: Eyschen, Paul. *Das staatsrecht des grossherzogthums Luxemburg*, Tübingen. 1917; Ruppert, P. *Code politique et administrative du grand-duché de Luxembourg*. 1907; Fruin, Robert, *De zeventien provincien en haar vertegenwoordigin in de staten-generaal*. 1903.



## CONSTITUTIONAL LAW IN 1919-1920. I

### THE CONSTITUTIONAL DECISIONS OF THE SUPREME COURT OF THE UNITED STATES IN THE OCTOBER TERM, 1919

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The work of the Supreme Court during the term concluded last June was quite unusual both in the nature of the problems involved and the importance of certain of the results achieved. The center of interest in constitutional interpretation has swung, for the time being at least, decidedly from questions of state power to those of national power. This is partly the aftermath of the war, partly the corollary of recent amendments to the Constitution. By the same sign, the court has been confronted in recent months with not a few problems of considerable novelty—some indeed being questions of first impression—with the result that it has been called upon to enunciate principles which must guide its interpretation of important provisions of the Constitution for years to come. In preparing this review, the unique quality of the court's work during the period under consideration ought to determine the procedure. Accordingly the greater part of the space is devoted to a few outstanding cases, all of which involve questions of national power, while less striking results have received much briefer consideration, often only cursory mention.

#### A. QUESTIONS OF NATIONAL POWER

##### I. INCOME TAXATION

###### *1. The Stock Dividend Decision*

What is "income" within the meaning of the Sixteenth Amendment?<sup>1</sup>

<sup>1</sup> "The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration."

By article 1, section 9, of the Constitution, "No capitation or other direct tax shall be laid, unless in proportion to the census or enumeration hereinbefore directed to be taken." It was held in *Pollock v. Farmers Loan and Trust Co.*, 158 U. S. 601, that a general tax on incomes derived from property amounted to a

The question may take many forms. In *Eisner v. Macomber*<sup>2</sup> it was as follows: Is a dividend paid in additional stock of the issuing company, which is distributed *pro rata* among the stockholders, taxable as income of such stockholders? A majority of the court, speaking through Justice Pitney, answered no, and in so doing set aside a part of the Income Tax Act of 1916, and by force of *stare decisis* a part of the present act.<sup>3</sup>

"direct tax." The Sixteenth Amendment was designed to overcome the effect of this decision, but leaves the general provision respecting "direct taxes" standing. Whether income taxes are now to be regarded as "indirect" seems to be still a moot question. Compare Justice Pitney's opinion in the instant case with the Chief Justice's opinion in *Brushaber v. Union P. R. Co.* 240 U. S. 1.

<sup>2</sup> 252 U. S. The case was decided, after reargument, March 8, Justices Day, Holmes, and Brandeis, of whom the two latter prepared opinions, dissenting.

<sup>3</sup> A clearer comprehension of the issue between the majority and minority of the court in this case will perhaps be aided by conceiving the following set of facts: The X W Z corporation, chartered under the laws of state M, is capitalized at one million dollars. A buys one hundred shares of stock at par, which is \$100. Later the company accumulates a surplus of \$200,000, with the result that A's stock is now worth \$120 per share. At this moment the directors take up the question of what should be done with the surplus, and five possible courses are found to be open: 1. The surplus, which is at present held, let us suppose, in stock of the A B C corporation, may be liquidated and paid in cash to the stockholders of the X Y Z corporation. By *Lynch v. Hornby* (247 U. S. 339), A's share of the dividend, though extraordinary in amount and based upon earnings, or even upon increase in the value of the corporation assets, which accrued before the Sixteenth Amendment was added to the Constitution, is taxable income under the amendment. 2. Or the surplus may be paid in the stock held in the A B C company, in which case A's share of it is, by *Peabody v. Eisner* (247 U. S. 347), still taxable as income, under the same conditions as before. 3. Or the directors may decide that it is desirable to increase the capital assets of the company to the amount of the surplus, and with that end in view, they may arrange for an increase of stock to the amount of \$200,000, to be offered to the stockholders *pro rata* at par at the same time that the cash dividend is paid as under "1." In this case too, it appears, A would be taxed on his share of the dividend whether he availed himself of the option to subscribe for his *pro rata* of the new stock or not (see J. Brandeis' dissenting opinion in *Eisner v. Macomber*). 4. Or the directors might decide to transfer the surplus directly to the capital account of the company and vote no dividend at all. In this case A's share of the benefit would still appear in the fact that his original stock stood at a premium, but probably would be taxable as income only if he sold this stock and then only to the extent that the proceeds of the sale represented a profit accruing to him—not the company—since 1913, the date when the Sixteenth Amendment was added to the Constitution (see Justice Pitney's opinion in *Eisner v. Macomber*). 5. Or finally, the directors might decide to transfer the surplus to the capital account of the company by issuing \$200,000 worth of new

Justice Pitney's argument runs, in substance, as follows: In the first place, he points out the obvious fact that the stockholder is not enriched by the new stock since this has absorbed the premium on his original holding; instead, for instance, of owning 1000 shares valued at \$120 each, he now owns 1200 shares valued at \$100 each. But that this fact is immaterial to the case is shown by the equally obvious fact that the same effect would result from a cash dividend of like size. Before the payment of the dividend, the owner's stock would be worth \$120 a share; after it, it would be worth only \$100, but the difference would be in his pocket, and taxable, the cases show, as income. In the latter case, in other words, Congress is permitted to take account of the fact that the stockholder has been enriched in consequence of the earnings of his company, while in the former case, by the decision under review, it is not permitted to do so.

In the second place, Justice Pitney makes much of the fact that a stockholder's share of a stock dividend is necessary to entitle him to his original participation in the control of the company and in future dividends. Suppose, he says, the shareholder has not the wherewithal to pay an income tax upon his dividend stock; then, of course, he would have to sell some of this stock, and with it a proportionate share of his voting power in the corporation. "Nothing," Justice Pitney continues, "could more clearly show that to tax a stock dividend is to tax a capital increase, and not income, than this demonstration that in the nature of things it requires conversion of capital in order to pay the tax." But the very question at issue is whether a stock dividend is capital or income. Grant, however, that it is capital, because it carries with it "a right preservative of rights" in the control of the corporation, still the question arises, how did the stockholder come into possession of it? The answer is obvious: It was bought for him by his duly authorized agent, the corporation, out of funds earned by that agent for his benefit, which benefit is now returned to him in the form of the same relative control indeed, but over a larger capital investment.

In the third place, Justice Pitney points out that a stock dividend takes nothing from the property of the corporation. But the answer again is clear. The very purpose of a stock dividend is to add to the property of the corporation, that is to say, its fixed capital. What was

stock against it, the new shares to be distributed among the stockholders *pro rata*. A's share of the distribution would be 200 shares, representing a value of \$20,000; and by *Macomber v. Eisner* would not be taxable as income under the Sixteenth Amendment, that is, without apportionment.

a fund out of which cash dividends might have been paid, is now transferred permanently to the active assets of the company. The original question, therefore, still remains. What was the source of this fund; and also, what was the nature of the transaction by which it was added to the corporation's permanent capital? Obviously the fund came from the earnings of the corporation, that is of the stockholders acting through a corporate agent, and its permanent transference to capital account was a further investment effected by the stockholders through the same agency, in the business thus conducted.

But this point is worth scrutinizing a little further, since it embodies an idea which underlies Justice Pitney's entire argument. This is that the corporate surplus against which a stock dividend is issued is, as to stockholders, capital even before the dividend is issued, that indeed the issuance of the dividend is "merely bookkeeping." It must of course be conceded to Justice Pitney that, by the law ordinarily governing corporations, no stockholder has "a right to any particular portion of the assets" of the corporation "unless or until the directors conclude that dividends shall be made and a part of the company's assets segregated from the common fund for the purpose." Nevertheless, we are also confronted with the palpable fact that where a corporate surplus has accumulated, the stockholder has been thereby enriched. The question accordingly arises, why may not Congress, penetrating the corporate veil, proceed to treat the stockholder's interest in an undistributed corporate surplus as income, and so taxable under the Sixteenth Amendment?

Justice Pitney bases his answer to this question on his reading of the words "incomes from whatever source derived" of the amendment itself. These, he contends, set forth "a fundamental conception" of income as something "severed from capital." And from this it follows, he urges, that "we must treat the corporation as a substantial entity distinct from the stockholders," and that in fact, "it is only by recognizing such separateness that any dividend—even one paid in money or property—can be regarded as income of the stockholder."

The argument seems far-fetched, to say the least. If we regard the history of the Sixteenth Amendment, all that the words which Justice Pitney so much labors signify is that Congress may tax without resort to the rule of apportionment all incomes however produced—that and nothing more. Yet without this aid from the amendment, what becomes of Justice Pitney's apotheosis of the corporate entity? That the power of Congress may not be obstructed by the corporate entity

or any of its attributes from reaching what is, but for the corporation's intervention, stockholders' income, must follow from fundamental principles. The corporate entity is not the offspring of the Constitution, nor is it adopted by the Sixteenth Amendment; it is the creature exclusively of statute law, and whether such statute law comes from Congress itself or from a state, it is necessarily subordinate to the constitutional power of Congress over taxation.

Moreover, what does Justice Pitney mean when he says that income must be "severed" from its source—severed in what sense? Is, for example, the interest which is left by a depositor in a bank to draw further interest severed from the capital which produced it? Or take the instance mentioned by Justice Brandeis in his dissenting opinion. As he there points out, "the year's gains of a partner are taxable as income," even though there has been no segregation of his share in the total gains of the partnership. "Clearly," Justice Brandeis concludes, "segregation of assets in the physical sense is not an essential of income." Indeed it is to be feared that Justice Pitney will tell us next that there are no incomes except such as are constituted from corporate dividends formally declared, in which case he will have approximated to the Reverend Mr. Capstick's thesis with regard to the relation of sin and grace.

This brings us to the final turn in Justice Pitney's argument, and perhaps its most significant one. It consists of an appeal to the definition of "direct tax," laid down in the *Pollock* case of 1895 as a tax on property "because of ownership," which is shortly followed by the caution that the constitutional provision requiring that such taxes be apportioned "still has an appropriate and important function," and, at a considerable distance, by the assertion that "enrichment through increase in value of capital investment is not income in any proper meaning of the word." The argument thus insinuated clearly rests upon the assumption already dealt with, that a corporate surplus is to be treated as capital—or capital increase—prior to dividend declared, and so adds no independent force to Justice Pitney's position. It may, however, indicate the feeling of the court that it must henceforth endeavor to distinguish capital earnings and capital accretions, and when the two are merged to treat the whole as capital. The danger is that such an idea would, if persisted in, eventually so entangle the power of Congress to tax incomes in "a net work of juridical niceties" as to disable it entirely.

How, then, are we to assess *Eisner v. Macomber* at the present moment? That it falls in line with earlier decisions under the amendment and even farther back<sup>4</sup> is apparent, and this fact—it is equally

<sup>4</sup> The first of these is *Gibbons v. Mahon* (136 U. S. 548) in which the court, following what is called "the Massachusetts rule," decided that as between the holder of a life interest in an estate and the remainder man, the latter was entitled to receive a stock dividend. The decision turns of course upon the proposition that a stock dividend is not income and for this proposition the court urges several of the arguments which are reviewed above in Justice Pitney's opinion. The second precedent lies nearer to hand. It is the case of *Towne v. Eisner* (245 U. S. 418), in which the question at issue was whether the word "income" as used in the Act of 1913 included stock dividends. A unanimous court, speaking through Justice Holmes, who is a dissident in *Eisner v. Macomber*, said no. It is true that Justice Holmes took pains to state in his opinion that the word "income" did not "necessarily" mean "the same thing in the Constitution and in the act" under review, but this does not prevent him from anticipating Justice Pitney in repeating the arguments which had been advanced in the *Gibbons* case, arguments which are equally available, it would seem, to define the term "income" wherever it occurs. But the really compelling precedent is the decision in *Lynch v. Hornby*, which was noted above. This decision, clearly, could have been reached only by regarding the corporation and the stockholder as distinct entities, nor indeed could the tax there involved have been sustained under the Sixteenth Amendment on any other assumption. The majority of the court accordingly felt in the *Macomber* case, that Congress, having profited so conspicuously by this idea, ought also to shoulder its disadvantages. Indeed, Justice Brandeis himself virtually admits this degree of justification for the court's decision. He says:

"The equivalency of all dividends representing profits, whether paid in cash or in stock, is so complete that serious question of the taxability of stock dividends would probably never have been made if Congress had undertaken to tax only those dividends which represented profits earned during the year in which the dividend was paid, or in the year preceding. But this court, construing liberally not only the constitutional grant of power, but also the Revenue Act of October 3, 1913 [38 Stat. at L. 114, chap. 16, Comp. Stat. § 5291, 2 Fed. Stat. Anno 2d ed. p. 724], held that Congress might tax, and had taxed, to the stockholder, dividends received during the year, although earned by the company long before, and even prior to the adoption of the 16th Amendment. *Lynch v. Hornby*, 247 U. S. 339, 62 L. ed. 1149, 38 Sup. Ct. Rep. 543. That rule, if indiscriminately applied to all stock dividends, representing profits earned, might, in view of corporate practice, have worked considerable hardship, and have raised serious questions."

Recurring to *Gibbons v. Mahon*, it should be noted that the "Massachusetts rule" has been generally rejected by the state courts in favor of the "Pennsylvania," or as it is often called, the "American rule," which is that "where a stock dividend is paid, the court shall inquire into the circumstances under which the fund had been earned and accumulated out of which the dividend, whether a regular, an ordinary, or an extraordinary one, was paid. If it finds

evident—must constitute its principal justification. On the other hand, no more than its predecessors does it yield any clear cut theory of "income." Justice Pitney, to be sure, tells us that the word is used in the amendment in its "ordinary sense," but his own pursuit of this will-o-the-wisp appears to have landed him in a bog. Justice Brandeis, in his dissenting opinion, proffers, more or less casually, "the year's gains" as a definition, and certainly if any one feature presents itself to "ordinary sense" as demarking income from capital, it is its strict contemporaneity—income is current profits, capital is accumulated profits. Indeed, were the exactions of Congress to be confined to gains of the tax year, or approximately so, it may well be doubted whether it would ever be necessary for the court to concern itself with distinctions between capital increments and earnings, or even between the corporate entity and stockholders. Furthermore, this definition would slam the door once and for all on retroactive tax proposals, such as appeared in Congress last spring in connection with the Bonus Bill. That the court should ever have opened the door to such proposals is quite inexplicable, but having done so, it requires no seventh son of a seventh son to foresee that sooner or later it will have occasion to retrace some of its steps, not merely in deference to the distinction between "income" taxes and "direct" taxes, but to that between taxation and confiscation.<sup>5</sup> Altogether the case is important rather as a point of departure than for final results.

## 2. *Taxation of Judicial Salaries*

In *Evans v. Gore*<sup>6</sup> the court held that a general income tax levied, albeit without discrimination, upon the salaries of federal judges con-

that the stock dividend was paid out of profits earned since the decedent's death, the stock dividend belongs to the life tenant; if the court finds that the stock dividend was paid from capital or from profits earned before the decedent's death, the stock dividend belongs to the remainderman." Justice Brandeis, citing *Earp's Appeal*, 28 Pa. St. 368. It should also be noted that the Massachusetts Supreme Judicial Court has refused to regard the "Massachusetts rule" as pertinent in determining whether a stock dividend is "income" for purposes of taxation, which is accordingly held to be the case. *Trefrey v. Putnam*, 227 Mass. 522.

<sup>5</sup> See in this connection a communication by Charles Robinson Smith in the *Weekly Review*, June 22, 1920. Retroactive income taxes—supposing there can be such a thing—are obviously a double injustice when the rate of taxation is progressive, for then the past accumulation swells the rate at which the total income is taxed.

<sup>6</sup> 252 U. S., decided June 1, Justices Holmes and Brandeis dissenting.

stitutes a "diminution" of such salaries within the meaning of the Constitution,<sup>7</sup> and so held void section 213 of the Income Tax Act of February 24, 1919. Justice Van Devanter, speaking for the court, insists strongly upon the importance in the minds of the framers of the Constitution of the idea of judicial independence,<sup>8</sup> and from this deduces the conclusion that the constitutional provision involved is to be construed, not as a private grant, but as a limitation imposed in the public interest, and, therefore, broadly. So far he is unquestionably right, as also he is in claiming the support of precedent for the decision, notwithstanding the subsequent intervention of the Sixteenth Amendment, since it has been repeatedly ruled by the court in recent cases that this amendment does not "extend the taxing power to new or excepted subjects, but merely removes all occasion otherwise existing for an apportionment among the states of taxes laid on incomes."<sup>9</sup>

Nevertheless, this decision can hardly avoid the charge, on the one hand of pedantry, on the other hand of missing essential distinctions. Thus Justice Van Devanter cites previous cases for such propositions as, that the power to tax carries with it the power "to embarrass and destroy," the power "to select one calling and omit another,"<sup>10</sup> etc. The answer is that a tax which selected judicial salaries for peculiar burdens would be unconstitutional on the face of it, but that the tax before the court made no such discrimination, and as Justice Holmes puts it in his dissenting opinion, there is no good reason why a federal judge should be exonerated "from the ordinary duties of a citizen,

<sup>7</sup> Article 3, section 1, which reads as follows: "The judicial power of the United States shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish. The judges, both of the supreme and inferior courts, shall hold their offices during good behavior, and shall, at stated times, receive for their services a compensation which shall not be diminished during their continuance in office."

<sup>8</sup> Quoting from the *Federalist*, Nos. 78 and 79; Marshall's speech in the Virginia Convention of 1829; Sparks' *Writings of Washington*, Vol. 10, pp. 35-36; Story's *Commentaries*, Vol. 2, § 1628; Kent's *Commentaries*, Vol. 1, p. 294; Woodrow Wilson's *Constitutional Government*, 17, 142.

<sup>9</sup> Citing *Brushaber v. Union P. R. Co.*, 240 U. S. 1; *Stanton v. Baltic Min. Co.*, *ibid.*, 103; *W. E. Peck & Co. v. Lowe*, 247 U. S. 165; and *Eisner v. Macomber* *supra*.

<sup>10</sup> Citing *M'Culloch v. Maryland*, 4 Wheat. 316; *Pacific Ins. Co. v. Soule*, 7 Wall. 433; *Austin v. Boston*, 7 Wall. 694; *Veazie Bank v. Fenno*, 8 Wall. 533; *Knowlton v. Moore*, 178 U. S. 41; *Treat v. White*, 181 U. S. 264; *McCray v. United States*, 195 U. S. 27; *Flint v. Stone Tracy Co.* 220 U. S. 107; *Billings v. United States*, 232 U. S. 261; *Brushaber v. Union P. R. Co.* 240 U. S. 1.



which he shares with all others." And in the same spirit should be answered Justice Van Devanter's poser: "Of what avail to him [the judge] was the part which was paid with one hand and then taken back with another?" It was of just this avail, that it enabled him to discharge a civic duty by contributing his proper share to the support of the government which gives him protection.

Moreover, in strict logic, the decision actually invites the very thing which it is intended to prevent. What the Constitution forbids is a diminution of salary during the term of the incumbent. What, then, is to prevent Congress, in view of the idea that the power to tax carries with it the power to make discriminations, from taxing salaries of future appointees to the federal bench at an especially high rate? In the case of the President, an even more curious result follows. His salary may be neither diminished nor increased during his term.<sup>11</sup> If, therefore, a President entered office under an act which taxed his salary as income, this tax could not be removed during the entire four years for which he was elected. As to all others the tax, supposing it to be a general one, might be repealed but the President would have to continue paying it to the end of the chapter.

A more serious aspect of *Evans v. Gore* is the intention which it manifests on the part of the court to sustain indefinitely the immunity of salaries of state officials and of incomes from state and municipal bonds from federal taxation. This immunity follows mathematically from the proposition that the Sixteenth Amendment does not increase the taxing power of Congress, when this is read in the light of the decision in *Collector v. Day*,<sup>12</sup> which is one of the precedents relied

<sup>11</sup> Article 2, section 1, which reads: "The President shall, at stated times, receive for his services a compensation, which shall neither be increased nor diminished during the period for which he may have been elected, and he shall not receive within that period any other emolument from the United States or any of them."

<sup>12</sup> 11 Wall. 113. In passing the Income Tax Law of 1919 Congress refused to treat interest received from bonds issued by a state or any of its counties or municipalities as within the taxing power (*Cong. Rec.*, Vol. 57, pp. 553, 774-777, 2988; ch. 18, § 213, 40 Stat. at L. 1065, Comp. Stat. § 6336½ ff.); and in the regulations issued under that law the administrative officers recognize that the salaries and emoluments of the officers of a state and its political subdivisions are not taxable by the United States (Reg. 45, published 1920, pp. 47, 313). Indeed, the provision pronounced void in the instant case was evidently regarded in Congress as of very doubtful constitutionality. Said the chairman of the house committee: "I wish to say, Mr. Chairman, that while there is considerable doubt as to the constitutionality of taxing . . . Federal judges'

upon for the present decision. This view of the Sixteenth Amendment is no doubt sound. *Collector v. Day*, on the contrary, ought to be reëxamined at the first opportunity from the point of view of more recent developments of constitutional law.<sup>13</sup> Nobody of course would claim that Congress may exercise its taxing power in a way to impair a republican form of government in the states.<sup>14</sup> But that fact furnishes no reason for building up a privileged class of property holders exempt from taxation by the national government as to their incomes, nor for thus stimulating extravagance in the state governments.<sup>15</sup>

## II. NATIONAL PROHIBITION

### 1. War Prohibition

The provisions of the first War Prohibition Act, which was approved by the President ten days after the signing of the armistice, were confined to distilled liquors and to "intoxicating malt or vinous liquors." In *Hamilton v. Kentucky Distilleries and Warehouse Company* and *Dryfoos v. Edwards*,<sup>16</sup> the validity of the act and its enforceability in the case of plaintiffs in error were challenged, on the ground that it violated the "due process of law" clause of the Fifth Amendment, that the war emergency which was urged in justification of it was at an

or the President's salaries, . . . we cannot settle it; we have not the power to settle it. No power in the world can settle it except the Supreme Court of the United States. Let us raise it, as we have done, and let it be tested, and it can only be done by someone protesting his tax and taking an appeal to the Supreme Court." And again: "I think really that every man who has a doubt about this can very well vote for it and take the advice of the gentleman from Pennsylvania [Mr. Graham] which was sound then and is sound now, that this question ought to be raised by Congress, the only power that can raise it in order that it may be tested in the Supreme Court, the only power that can decide it." *Congressional Record* 56: 10, 370. See also House Report, No. 767, 65th Cong., 2nd Sess., and Senate Report, No. 617, 65th Cong., 3rd Sess. These data are given in the notes to Justice Van Devanter's opinion.

<sup>13</sup> Especially the general principle that classifications must not be arbitrary. See Chief Justice White's opinion in the *Brushaber* case, *supra*. See also Justice Strong's opinion in *R. R. Co. v. Peniston*, 18 Wall 5.

<sup>14</sup> Article 4, section 4 of the Constitution, which reads: "The United States shall guarantee to every State in this Union a republican form of government, and shall protect each of them against invasion, and on application of the legislature, or of the executive (when the legislature cannot be convened), against domestic violence."

<sup>15</sup> Cf. *Green v. Frazier*, *infra*.

<sup>16</sup> 251 U. S. 146.

end, that it had been abrogated by the adoption of the Eighteenth Amendment.

A unanimous court, speaking through Justice Brandeis, rejected all three contentions. The argument based on the Eighteenth Amendment was reduced to an absurdity. If valid, said Justice Brandeis, it would apply even though hostilities were still flagrant, and as well against the police powers of the states as against the war powers of Congress. As to the passing of the war emergency, the court admitted that there were casual statements by the President to the effect that peace was here, but pointed to the continuance of the war activities of the government in a variety of fields as indicating the actual contrary judgment of the political branches of the government. It is, however, the court's answer to the first of the above recited objections which is of most interest from the point of view of the constitutional law. It may be given in Justice Brandeis' own language:

"That the United States lacks the police power, and that this was reserved to the states by the 10th Amendment, is true. But it is none the less true that when the United States exerts any of the powers conferred upon it by the Constitution, no valid objection can be based upon the fact that such exercise may be attended by the same incidents which attend the exercise by a state of its police power, or that it may tend to accomplish a similar purpose.<sup>17</sup> . . . . The war power of the United States, like its other powers and like the police power of the states, is subject to applicable constitutional limitations<sup>18</sup> . . . . but the 5th Amendment imposes in this respect no greater limitation upon the national power than does the 14th Amendment upon state power<sup>19</sup> . . . . If the nature and conditions of a restriction upon the use or disposition of property are such that a state could, under the police power, impose it consistently with the 14th Amendment without making compensation, then the United States may for a permitted purpose impose a like restriction consistently with the 5th Amendment without making compensation; for prohibition of the liquor traffic is

<sup>17</sup> Citing *Lottery Case* (*Champion v. Ames*) 188 U. S. 321; *McCray v. United States*, 195 U. S. 27; *Hipolite Egg Co. v. United States*, 220 U. S.; *Hoke v. United States*, 227 U. S. 308; *Seven Cases v. United States*, 239 U. S. 510; *United States v. Doremus*, 249 U. S. 86.

<sup>18</sup> Citing *Ex parte Milligan*, 4 Wall. 2; *Monongahela Nav. Co. v. United States*, 148 U. S. 312; *United States v. Joint Traffic Asso.* 171 U. S. 505; *McCray v. United States*, 195 U. S. 27; *United States v. Cress*, 243 U. S. 316.

<sup>19</sup> Citing *Re Kemmler*, 136 U. S. 436; *Carroll v. Greenwich Ins. Co.*, 199 U. S. 401.

conceded to be an appropriate means of increasing our war efficiency." Justice Brandeis then proceeds to point out that the act effected no appropriation of liquor stocks for war purposes, but only imposed an uncompensated restriction upon their disposal, which "was of a nature far less severe" than restrictions previously imposed by state prohibition laws upon the use of existing stocks of liquor, and sustained by the court under the Fourteenth Amendment.<sup>20</sup>

The Distillery cases were decided on December 15, 1919. The act which they involved had already been supplanted by Part 1 of the so-called "Volstead Act," which was passed over the President's veto on October 28, 1919. In *Ruppert v. Caffey*,<sup>21</sup> decided on January 5,

<sup>20</sup> The opinion then continues as follows: "The question whether an absolute prohibition of sale could be applied by a state to liquor acquired before the enactment of the prohibitory law has been raised by this court, but not answered, because unnecessary to a decision. *Bartemeyer v. Iowa*, 18 Wall, 129; *Boston Beer Co. v. Massachusetts*, 97 U. S. 25; *Eberle v. Michigan*, 232 U. S. 700; *Barbour v. Georgia*, 249 U. S. 454. See, however, *Mugler v. Kansas*, 123 U. S. 623." The problem thus suggested is recurred to in *Ruppert v. Caffey*, *infra*, and disposed of as follows:

"Plaintiff contends, however, that even if immediate prohibition of the sale of its nonintoxicating beer is within the war power, this can be legally effected only provided compensation is made; and it calls attention to the fact that in *Barbour v. Georgia*, 249 U. S. 454, following some earlier cases, the question was reserved whether, under the police power, the states could prohibit the sale of liquor acquired before the enactment of the statute. It should, however, be noted that, among the judgments affirmed in the *Mugler Case*, was one for violation of the act by selling beer acquired before its enactment (see pp. 625, 627); and that it was assumed without discussion that the same rule applied to the brewery and its product (p. 669). But we are not required to determine here the limits in this respect of the police power of the states; nor whether the principle is applicable here under which the Federal government has been declared to be free from liability to an owner 'for private property injured or destroyed during the war, by operations of armies in the field or by measures necessary to their safety and efficiency' (*United States v. Pacific R. Co.* 120 U. S. 227); in analogy to that by which states are exempt from liability for the demolition of a house in the path of a conflagration, see *Lawton v. Steele*, 152 U. S. 133; or for garbage of value taken, (*California Reduction Co. v. Sanitary Reduction Works*, 199 U. S. 306; *Gardner v. Michigan*, 199 U. S. 325); or for unwholesome food of value destroyed (*North American Cold Storage Co. v. Chicago*, 211 U. S. 306; *Adams v. Milwaukee*, 228 U. S. 572) for the preservation of the public health. Here, as in *Hamilton v. Kentucky Distilleries & Warehouse Co.* *supra*, there was no appropriation of private property, but merely a lessening of value due to a permissible restriction imposed upon its use."

<sup>21</sup> 251 U. S. 264, decided January 5, Justices McReynolds (opinion), Day, Van Devanter, and Clarke dissenting. The same day was decided *U. S. v. Standard*

1920, the contention urged in the earlier cases that the war emergency justifying such measures by Congress had already passed, was renewed with two-fold vigor, and indeed with such degree of success as is represented in the achievement of a closely divided court, the case being decided in favor of the act by the narrow margin of one vote.

But not only was the Volstead Act late in the field, it was also a much more drastic enactment than its predecessor. That, as we have seen, confined its attention to distilled and intoxicating liquors; this forbade the manufacture and sale of all beverages that have an alcoholic content as great as one half of one per cent in volume. In other words, it banned liquors which in point of fact were non-intoxicating; and this, plaintiff in error argued, Congress could not do even when clad in the full panoply of its war powers.

The court ruled nevertheless that "the question whether the plaintiff's beer was intoxicating was immaterial." From the experience of the states, attested by the action of their legislatures and the decisions of their courts, the opinion recites, "Congress might reasonably conclude that a rigid classification of beverages is an essential of either effective regulation or effective prohibition of intoxicating liquors."<sup>22</sup> The question, in short, was one solely of reasonable legisla-

Brewing Co. *ibid.* 210, in which the court held that the Act of November 21, 1918, did not prohibit the manufacture of malt and vinous liquors which were not intoxicating in fact, even though of greater alcoholic content than  $\frac{1}{2}$  of 1 per cent in volume. Later, in *U. S. v. Simpson*, — U. S. —, decided on April 19, it was held that the Reed "Bone-Dry" Amendment of March 3, 1917, covered the transportation of liquors for personal use of the owner in his own automobile.

<sup>22</sup> An elaborate epitome of state statutes and decisions dealing with the question of what is "intoxicating" is thus summarized by Justice Brandeis: "A test often used to determine whether a beverage is to be deemed intoxicating within the meaning of the liquor law is whether it contains  $\frac{1}{2}$  of 1 per cent of alcohol by volume. A survey of the liquor laws of the states reveals that in sixteen States the test is either a list of enumerated beverages without regard to whether they contain any alcohol, or the presence of any alcohol in a beverage, regardless of quantity; in eighteen States it is the presence of as much as or more than  $\frac{1}{2}$  of 1 per cent of alcohol; in six States, 1 per cent of alcohol; in one State, the presence of the 'alcoholic principle;' in two States 2 per cent of alcohol. Thus in forty-two of the forty-eight States—Maryland appears in two classes above—a malt liquor containing over 2 per cent of alcohol by weight or volume is deemed, for the purpose of regulation or prohibition, intoxicating as a matter of law. Only one State has adopted a test as high as 2.75 per cent by weight or 3.4 per cent by volume. Only two States permit the question of the intoxicating character of an enumerated liquor to be put in issue. In three

tive discretion; and "Since Congress has the power to increase war efficiency by prohibiting the liquor traffic, no reason appears why it should be denied the power to make its prohibition effective." Neither was it unreasonable or arbitrary to make the law operative directly upon its enactment, the same latitude having been repeatedly allowed the states in the exercise of their police powers. "Hardship resulting from making an act take effect upon its passage is a frequent incident of permissible legislation; but whether it shall be imposed rests wholly in the discretion of the law-making body."

The great importance of the War Prohibition cases consists in the definition which they afford of the legislative discretion of Congress under the "necessary and proper" clause, particularly in war time. Within its narrower field Congress enjoys, as against private rights, the same breadth of choice of measures to make its powers effective that the states enjoy in that wider field which is designated the police power. The principle is no doubt a beneficial one, but the very concession gives an edge to criticism of another feature of these cases, namely the failure of the court to go more thoroughly into the question of the existence of a war emergency. It is all very well that the national government should be recognized as constitutionally competent to meet great national emergencies, but the question whether at any particular time such an emergency exists is a material one, and neither Congress nor the President should be allowed to lift themselves, as it were, by their own boot straps into the possession of unusual powers.

## *2. The Eighteenth Amendment*

The Eighteenth Amendment<sup>22</sup> was proposed by Congress on December 3, 1917, proclaimed as part of the Constitution by the secretary of state on January 29, 1919, and put in operation one year later by the

other States the matter has not been made clear either by decision or legislation. The decisions of the courts as well as the action of the legislatures make it clear—or, at least, furnish ground upon which Congress reasonably might conclude—that a rigid classification of beverages is an essential of either effective regulation or effective prohibition of intoxicating liquors."

<sup>22</sup> "SECTION 1. After one year from the ratification of this article the manufacture, sale, or transportation of intoxicating liquors within, the importation thereof into, or the exportation thereof from the United States and all territory subject to the jurisdiction thereof for beverage purposes is hereby prohibited.

"SECTION 2. The Congress and the several States shall have concurrent power to enforce this article by appropriate legislation."

Volstead Act, the passage of which over the President's veto on October 28, 1919, was noted above. The proclamation of the amendment acted upon the enemies of national prohibition as a call to arms, and very soon, under the leadership of a coterie of distinguished and well-fed counsel, they proclaimed their intention of fighting the amendment to the last stand, that is, the Supreme Court of the United States.

The opening gun in the war thus declared was set off in *Hawke v. Smith*,<sup>24</sup> in which the question at issue was the validity of a recent provision of the Ohio constitution reserving to the people of that state "the legislative power of referendum on the action of the General Assembly ratifying any proposed amendment to the Constitution of the United States;" or more broadly, whether the people of the states can control in any way the action of their legislatures in performing their function in connection with proposed amendments to the United States Constitution.

Those who answered this question affirmatively relied upon one or both of the two following propositions: (1) that it was the intention of article 5 of the Constitution in employing the term "legislatures" to require ratification by the legislative action of the states through the agencies existing at the time of the approval of an amendment; (2) that even if this did not necessarily follow from the meaning of the word "legislatures" as used in this context, it at any rate resulted from the fact that the participation of the state legislatures in the work of amending the national Constitution was in exercise of an inherent right of the states, from which it followed in turn that the states must be able to control their agents in exercising this right.

Evidently this argument invokes afresh the conception of the Constitution as a compact of states vested with rights which no authority conferred by the Constitution can possibly invade; and indeed, Justice Day, in pronouncing the opinion of the unanimous court, meets this conception at the threshold of his argument. Thus he writes: "The Constitution of the United States was ordained by the people, and, when duly ratified, became the Constitution of the people of the United States, *McCulloch v. Maryland*, 4 Wheat 316. The states surrendered to the general government the powers specifically conferred upon the nation and the Constitution and laws of the United States are the supreme law of the land." From this it follows that, the fifth article being "a grant of authority by the people to Congress,"

<sup>24</sup> 252 U. S., decided June 1.

"the determination of the method of ratification is the exercise of a national power specifically granted by the Constitution," not of a power retained by the states. It likewise follows that "the ratification by a state of a constitutional amendment is not an act of legislation within the proper sense of the word," but the exercise of a power also having "its source in the federal Constitution, . . . to which the state and its people have alike assented."<sup>25</sup>

The question before the court, therefore, becomes narrowed simply to this: "What did the framers of the Constitution mean in requiring ratification by 'legislatures,'" and to raise this question, Justice Day implies, is to answer it. The Constitution uses the term "legislature" or "legislatures" several times, and always in the evident sense of a representative body vested with power to make laws for the people, and consisting, it is generally assumed, of a more and a less numerous branch. Indeed, the Seventeenth Amendment, the most recent addition to the Constitution preceding the Eighteenth, uses the term "state legislatures" with precisely this connotation, and in clear contradistinction to "the electors," that is the voters of the states, and again "to the people" thereof.

But *Hawke v. Smith* was, as indicated above, only the opening gun of an assault all along the line by the forces of evil. On various dates in March no fewer than seven cases,<sup>26</sup> two of which were original bills

<sup>25</sup> The opinion further says: "At an early day this court settled that the submission of a constitutional amendment did not require the action of the President. The question arose over the adoption of the 11th Amendment. *Hollingsworth v. Virginia*, 3 Dall. 378. In that case it was contended that the amendment had not been proposed in the manner provided in the Constitution, as an inspection of the original roll showed that it had never been submitted to the President for his approval, in accordance with article 1, § 7 of the Constitution. The Attorney-General answered that the case of amendments is a substantive act, unconnected with the ordinary business of legislation, and not within the policy or terms of the Constitution investing the President with a qualified negative on the acts and resolutions of Congress. In a footnote to this argument of the Attorney General, Justice Chase said: 'There can surely be no necessity to answer that argument. The negative of the President applies only to the ordinary cases of legislation. He has nothing to do with the proposition, or adoption, of amendments to the Constitution.' The court by a unanimous judgment held that the amendment was constitutionally adopted."

<sup>26</sup> *State of Rhode Island, Complainant, v. A. Mitchell Palmer, Attorney General, et al.* (No. 29, Original.) *State of New Jersey, Complainant, v. A. Mitchell Palmer, Attorney General, et al.* (No. 30, Original.) *George C. Dempsey, Appt., v. Thomas J. Boynton, as United States Attorney, et al.* (No. 696.) *Kentucky Distilleries & Warehouse Company, Appt., v. W. V. Gregory,*



of equity, brought respectively by the states of Rhode Island and New Jersey to enjoin the attorney general of the United States from enforcing the Volstead Act, were argued on all phases of the amendment and the act. Not since the Milligan case was argued in 1866 has a more notable array of counsel stood up before the court, while the *amici curiae* filing briefs in the cases comprised precisely half the state attorneys general of the Union.

The court in sustaining the act did not hand down the customary argumentative opinion but only certain propositions labelled "Conclusions of the Court," which were read by Justice Van Devanter.<sup>27</sup>

as United States Attorney, et al. (No. 752.) Christian Feigenspan, a Corporation, Appt., v. Joseph L. Bodine, as United States Attorney, et al. (No. 788.) Hiram A. Sawyer, as United States Attorney, et al., Appts., v. Manitowoc Products Company. (No. 794.) St. Louis Brewing Association, Appt., v. George H. Moore, Collector, et al. (No. 837.) The cases were decided June 7. Earlier in the term, on January 12, the court had refused jurisdiction of an original suit brought by a citizen of New Jersey, to enjoin the Attorney-General and certain other officials of the United States, as well as the state of New Jersey, from enforcing the Eighteenth Amendment. *Duhne v. United States*, 251 U. S. 311. The decision rests on *Marbury v. Madison*, 1 Cranch 129 and *Hans v. La.*, 134 U. S. 1.

<sup>27</sup> "1. The adoption by both Houses of Congress, each by a two-thirds vote, of a joint resolution proposing an amendment to the Constitution, sufficiently shows that the proposal was deemed necessary by all who voted for it. An express declaration that they regarded it as necessary is not essential. None of the resolutions whereby prior amendments were proposed contained such a declaration.

"2. The two-thirds vote in each House which is required in proposing an amendment is a vote of two thirds of the members present,—assuming the presence of a quorum,—and not a vote of two thirds of the entire membership, present and absent. *Missouri P. R. Co. v. Kansas*, 248 U. S. 276.

"3. The referendum provisions of state constitutions and statutes cannot be applied, consistently with the Constitution of the United States, in the ratification or rejection of amendments to it. *Hawke v. Smith*, 252 U. S., decided June 1, 1920.

"4. The prohibition of the manufacture, sale, transportation, importation, and exportation of intoxicating liquors for beverage purposes, as embodied in the 18th Amendment, is within the power to amend reserved by Article 5 of the Constitution.

"5. That Amendment, by lawful proposal and ratification, has become a part of the Constitution, and must be respected and given effect the same as other provisions of that instrument.

"6. The first section of the Amendment—the one embodying the prohibition—is operative throughout the entire territorial limits of the United States, binds all legislative bodies, courts, public officers, and individuals within those limits,

Commenting upon this quite unusual procedure, Justice McKenna, the sole dissident, opines that if the precedent is followed, "it will decrease the literature of the court, even if it does not increase its lucidity." As a matter of fact, the "Conclusions" are to a large extent self-explanatory. Conclusion (1) flows from the well settled maxim that the court cannot pass upon the necessity of an exercise by Congress of any of its powers. Conclusions (2), (3) and (11) reiterate points recently decided. Conclusion (5) is simply a deduction from conclusions (1), (2), (3) and (4). Conclusions (6) and (7) may be fairly designated as self-evident, though the latter brings out the interesting fact that a too "liberal" enforcement act, whether congressional or state, would be subject to judicial review equally with a too drastic one. Conclusion (10) only restates results which had been reached long ago by the court in delimiting the police power of the states, and applicable *à fortiori* to the power of amending the Constitution of the United States. The same remark, moreover, applies to

and of its own force invalidates every legislative act—whether by Congress, by a state legislature, or by a territorial assembly—which authorizes or sanctions what the section prohibits.

"7. The second section of the Amendment—the one declaring 'the Congress and the several states shall have concurrent power to enforce this article by appropriate legislation'—does not enable Congress or the several states to defeat or thwart the prohibition, but only to enforce it by appropriate means.

"8. The words 'concurrent power' in that section do not mean joint power, or require that legislation thereunder by Congress, to be effective, shall be approved or sanctioned by the several states or any of them; nor do they mean that the power to enforce is divided between Congress and the states along the lines which separate or distinguish foreign and interstate commerce from intrastate affairs.

"9. The power confided to Congress by that section, while not exclusive, is territorially coextensive with the prohibition of the first section, embraces manufacture and other intrastate transactions as well as importation, exportation, and interstate traffic, and is in no wise dependent on or affected by action or inaction on the part of the several states or any of them.

"10. That power may be exerted against the disposal for beverage purposes of liquors manufactured before the Amendment became effective, just as it may be against subsequent manufacture for those purposes. In either case it is a constitutional mandate or prohibition that is being enforced.

"11. While recognizing that there are limits beyond which Congress cannot go in treating beverages as within its power of enforcement, we think those limits are not transcended by the provision of the Volstead Act (title II. § 1), wherein liquors containing as much as  $\frac{1}{2}$  of 1 per cent of alcohol by volume, and fit for use for beverage purposes, are treated as within that power. *Jacob Ruppert v. Caffey*, 251 U. S. 264."

Conclusion (4), which therefore demands elucidation only for its bearing on the question of the scope of the amending power as against the reserved rights of the states. But as we have just seen, the decision in *Hawke v. Smith* rests on the proposition that the powers conferred by the Constitution on the nation are supreme over all conflicting state powers whatsoever. Naturally, a power is not to be defined by reference to powers over which it is paramount.

Two conclusions, then, remain to be disposed of, namely (8) and (9), which embody the court's construction of the phrase "concurrent power" of section 2 of the amendment. The court was confronted by counsel with three possible interpretations of this phrase: (1) that it required concurrent, that is joint action, by Congress and the states in the enforcement of the amendment; (2) that it divided the field of action between Congress and the states along the lines which distinguish foreign and interstate commerce from intrastate affairs; (3) that it gave both Congress and the states power to act separately in enforcing the amendment, contemplating however, that in the event of conflict between congressional and state action, the former by virtue of article 6 of the Constitution<sup>28</sup> would prevail. The court definitely rejects the first two constructions and remains noncommittal with reference to the third. But no other principle, it is submitted, is broad enough to sustain conclusions (8) and (9). In its own good time no doubt the court will announce in unmistakable terms its continued adherence to the historical conception of "concurrent power" and the applicability of the conception to the Eighteenth Amendment.<sup>29</sup>

<sup>28</sup> "This Constitution, and the laws of the United States which shall be made in pursuance thereof, and all treaties made, or which shall be made under the authority of the United States, shall be the supreme law of the land; and the judges in every State shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding."

<sup>29</sup> Chief Justice White, however, in his concurring opinion, rejects all three views of "concurrent power," arguing that the "supremacy" clause is not operative in this instance, since the power of Congress and of the states to act comes equally from the Constitution itself, indeed from the same section of it. His own theory is that the power to define "intoxicating liquors" comes not from the second section of the amendment but from the first, and so rests exclusively in Congress, and that all that was sought by the second section was "to unite national and state administrative agencies in giving effect to the Amendment and the legislation of Congress enacted to make it complete." The argument is ingenious, but not altogether convincing. The "supremacy" clause takes no account of the source of the right of the state to act; it simply decrees that when both state and nation have the right to act the national view shall prevail.

But there is also a second question which conclusions (8) and (9) fail to answer clearly: Thus even with the supremacy of congressional action over conflicting state action clearly established in principle, the question would still remain, what sort of state action is conflicting? Suppose, for instance, that Congress should amend the Volstead Act so as to allow the manufacture and sale of beverages with an alcoholic content of five per cent, but that some of the states should still desire to outlaw beverages with a much smaller alcoholic content—could they do so within their own limits? Chief Justice White and Justice McKenna would unquestionably say no. Mr. Wayne Wheeler and other worthies of the Anti-Saloon League are of the contrary opinion. The majority of the court is again noncommittal.

The final impression left by these cases is that of the unlimited scope of the power to amend the national Constitution. Theoretically this may not be so as against private rights, but practically it is, since common prudence will never permit the court to traverse the will of two-thirds of Congress and three-fourths of the state legislatures. And the deduction to be made from this fact is obvious. The method of amendment should itself be amended, so as to render it at once more democratic and more conservative. State legislatures are no fit organs of this power; they are too open to solicitation, too timid. Happy ideas should be required to enter the Constitution through the portals of the ballot booth.<sup>30</sup>

Furthermore, it may well be contended, in view of Amendment 10 (see note 45, later) that all state powers are of constitutional rank. The term "concurrent powers" originated in *Federalist* No. 32 (Lodge's edition). It was given the significance attached to it by government's counsel in the present litigation in Justice Curtis's opinion in *Cooley v. Board of Wardens*, 12 How. 299 (1851). See also *Southern R. Co. v. Reid*, 222 U. S. 1.

<sup>30</sup> There may also be a reason in constitutional theory why the court should not attempt to pass upon the validity of amendments to the Constitution which have been adopted in due form. Unless the authority which "ordained and established" the Constitution originally has in some unaccountable manner disappeared, it must today be vested in the body which amends the Constitution. But this authority, having assumed to bestow all kinds of power, legislative, executive, and judicial, must be possessed of all kinds of power, with the result that the principle of the separation of powers, and therefore judicial review, are inapplicable to its acts. In other words, like the High Court of Impeachment, the body which amends the Constitution is the only court of its character, and, therefore, is the final judge of its own jurisdiction.

III. FREEDOM OF SPEECH AND PRESS<sup>31</sup>

The issue of constitutional freedom of speech and press was first raised in relation to the Espionage Act of 1917 in three cases decided the last term of court.<sup>32</sup> In one of these, that of *Schenck v. United States*, Justice Holmes, speaking for the unanimous court, dealt with the constitutional issue in the following terms: "The character of every act depends upon the circumstances in which it is done. The most stringent protection of free speech would not protect a man in falsely shouting 'fire' in a theatre and causing a panic. . . . The question in every case is whether the words were used in such circumstances and are of such a nature as to create a clear and present danger that they will bring about the substantive evils that Congress has the right to prevent." Commenting upon this passage and one of similar implication in the *Frohwerk* case in his article in this REVIEW, Professor Powell said: "This certainly hints that the Supreme Court may hold as a matter of law that the likelihood of any harm ensuing from the objectionable publication is so slim that a conviction is unwarranted."<sup>33</sup> This prophesy has been vindicated during the recent term of court to this extent: that whether the court shall supervise the verdicts of juries with some such test in mind seems to be, in one guise or another, the issue which has divided the previously unanimous court in the more recent cases.

The most instructive of these cases is that of *Abrams et al. v. United States*,<sup>34</sup> in which plaintiffs in error had been convicted of having urged a curtailment of products essential to the prosecution of the war "with intent by such curtailment to cripple or injure the United States in the prosecution of the war" with Germany. What Abrams and his associates had actually done was to print and distribute circulars denouncing "the Hypocrisy of the United States and her Allies," and summoning "the workers to a general strike." "Workers in the ammunition factories," read one of the circulars, "you are producing bullets, bayonets, cannon, to murder not only Germans but also your

<sup>31</sup> The First Amendment reads as follows: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances."

<sup>32</sup> *Schenck v. United States*, 249 U. S. 47; *Frohwerk v. United States*, *ibid.*, 204; *Debs v. United States*, *ibid.*, 211.

<sup>33</sup> 14 *American Political Science Review*, 65.

<sup>34</sup> 250 U. S. 616, decided November 10, 1919.

dearest, best who are in Russia and are fighting for freedom. . . . Workers up to fight." The authorship of these documents and the responsibility for their circulation were not denied, but it was contended that the conviction was nevertheless not warranted because the required criminal intent was lacking, the intent moving the accused having been the entirely innocent one of protesting against war by the Entente against Russia.

The court by a vote of seven to two sustained the conviction, Justice Clarke speaking for the majority. His central proposition is the ancient maxim that "men must be held to have intended and to be accountable for the effects which their acts were likely to produce. Even if," he continues, "their primary purpose and intent was to aid the cause of the Russian Revolution, the plan of action which they adopted necessarily involved, before it could be realized, defeat of the war programme of the United States."

To this reasoning Justice Holmes responds in his dissenting opinion as follows: "I am aware, of course, that the word 'intent' as vaguely used in ordinary legal discussion means no more than knowledge at the time of the act that the consequences said to be intended will ensue. Even less than that will satisfy the general principle of civil and criminal liability. . . . But, when words are used exactly, a deed is not done with intent to produce a consequence unless that consequence is the aim of the deed. . . . It seems to me that this statute must be taken to use its words in a strict and accurate sense. They would be absurd in any other. A patriot might think that we were wasting money on aeroplanes, or making more cannon of a certain kind than we needed, and might advocate curtailment with success; yet, even if it turned out that the curtailment hindered and was thought by other minds to have been obviously likely to hinder the United States in the prosecution of the war, no one would hold such conduct a crime."

Standing by itself this argument will hardly hold water. The legal test of intent does not establish, as Justice Holmes seems to imply, a conclusive presumption but one which may be refuted by evidence.<sup>35</sup> The published debates on the Espionage Act show conclusively that Congress was using the word "intent" on this occasion in what Justice Holmes himself admits is its legal sense.<sup>36</sup> The suppositious advocate

<sup>35</sup> See *Interpretations of War Statutes*, Bulletins 4, 49, 52, 79, 83, 112, 116, 133, 142, 148, 149, 156, 191, etc.

<sup>36</sup> See the debate of May 4, 1918. *Congressional Record*, 65th Cong., 2nd Sess., pp. 6039-6043.

of aeroplane production would be, it may be assumed, discreet enough not to apply the term "murder" to the war which he was ostensibly promoting. Finally, common sense no less than common law exact that a man be held to intend the necessary means to his objectives.

But it appears from further examination of his opinion that Justice Holmes does not regard his unconventional view of intent as standing by itself, but rather as a necessary instrument for enforcing the doctrine which he had earlier advanced in the *Schenck* case.<sup>37</sup> So the ultimate question raised is as to the soundness of that doctrine regarded as a limitation on the power of Congress in relation to freedom of speech and press. The pretended limitation is apparently made up out of whole cloth.<sup>38</sup> Congress has, of course, no general power to deal with freedom of speech and press. What power it has is derived from the "nec-

<sup>37</sup> Thus Justice Holmes's opinion continues: "It is only the present danger of immediate evil or an intent to bring it about that warrants Congress in setting a limit to the expression of opinion where private rights are not concerned. Congress certainly cannot forbid all effort to change the mind of the country. Now nobody can suppose that the surreptitious publishing of a silly leaflet by an unknown man, without more, would present any immediate danger that its opinions would hinder the success of the government arms or have any appreciable tendency to do so. Publishing those opinions for the very purpose of obstructing, however, might indicate a greater danger, and at any rate would have the quality of an attempt. So I assume that the second leaflet, if published for the purposes alleged in the fourth count, might be punishable. But it seems pretty clear to me that nothing less than that would bring these papers within the scope of this law. An actual intent in the sense that I have explained is necessary to constitute an attempt, where a further act of the same individual is required to complete the substantive crime, for reasons given in *Swift & Co. v. United States*, 196 U. S. 375, 396, 49 L. ed. 518, 524, 25, Sup. Ct. Rep. 276. It is necessary where the success of the attempt depends upon others, because if that intent is not present, the actor's aim may be accomplished without bringing about the evils sought to be checked. An intent to prevent interference with the revolution in Russia might have been satisfied without any hindrance to carrying on the war in which we were engaged." All this assumes that Congress may punish only utterances which constitute criminal attempts, and no proof is adduced of this assumption. The same idea had been put forward earlier by Professor Zechariah Chafee in an article in 32 *Harvard Law Review*, 947, where it is taken from a passage in Stephen's *History of the Criminal Law*, Vol. 2: 300. Stephen characterizes it as an "extreme" view, a characterization which Professor Chafee omits. See also Justice Holmes's earlier opinion in *Patterson v. Col.*, 205 U. S. 454.

<sup>38</sup> See the present writer's article, "Freedom of Speech and Press: a Résumé," in the *Yale Law Journal* (Nov., 1920); also 33 *Harvard Law Review*, 442 ff., which sets forth essentially the same point of view. See also, for a somewhat different point of view, W. R. Vance in 2 *Minnesota Law Review*, 239 ff.

essary and proper" clause, but the breadth of legislative discretion accorded by this clause, especially in war time, has already been illustrated by the War Prohibition cases. It is, moreover, a sound maxim of constitutional construction, which has received the approval of the court more than once, that the Constitution does not grant power in one section to withdraw it in another.<sup>39</sup>

The Abrams case was followed by a group of cases headed by *Schaefer v. the United States*,<sup>40</sup> and by the single case of *Pierce v. the United States*.<sup>41</sup> In the former, the conviction of two of the defendants was reversed and that of three was sustained; the conviction of Pierce was also sustained. Both occasions brought forth dissenting opinions from Justice Brandeis for himself and Justice Holmes, which, setting out from the principle asserted by the latter in the *Schenck* case, then proceed to a close examination of the evidence before the trial courts. The practical issue between majority and minority appears therefore to be, as was stated above, the degree of supervision which should be exercised by the court over the findings of juries in this class of cases. The majority say in effect, no greater degree of supervision than in ordinary criminal cases; the minority want a somewhat more extensive supervision.<sup>42</sup>

In summing up the results which the court has reached in its enforcement of the Espionage Act, so far as they bear on the subject of constitutional freedom of speech and press, the following propositions are tentatively offered: (1) Congress is not limited to forbidding words which are of a nature "to create a clear and present danger" to national interests, but it may forbid words which are intended to endanger those interests if in the exercise of a fair legislative discretion it finds it "necessary and proper" to do so; (2) the intent of an accused in uttering alleged forbidden words may be presumed from the reasonable consequences of such words, but the presumption is not a conclusive one and may be rebutted by evidence; (3) the court will not scrutinize on appeal the findings of juries in this class of cases more strictly than in other penal cases. In short, the cause of freedom of speech and press is largely in the custody of legislative majorities and of juries.

*(To be concluded.)*

<sup>39</sup> *Billings v. United States*, 232 U. S. 261; *Brushaber v. Union P. R. Co.*, 240 U. S. 1.

<sup>40</sup> 251 U. S. 466, decided March 1.

<sup>41</sup> 252 U. S., decided March 8.

<sup>42</sup> See, in this connection, *Goldman v. United States*, 245 U. S. 474, 477.



## AMERICAN GOVERNMENT AND POLITICS

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**The Second Session of the 66th Congress.**<sup>1</sup> The session of Congress which began on December 1, 1919, adjourned on June 5, 1920, to permit the members to attend the presidential nominating conventions and to participate in the campaign. It came to an end with a remarkable interchange of telegrams between President Wilson and the heads of seventeen railroad workers' unions. The chief executive expressed himself in no uncertain terms. During the nine months that the Sixty-sixth Congress had been in session, he said, no attempt had been made to deal with the cost of living, or to revise the tax laws. The railroad legislation was "so unsatisfactory that I could accept it, if at all, only because I despaired of anything better."

"In the light of the record of the present Congress," the President declared, "I have no reason whatever to hope that its continuance in session would result in constructive measures for the relief of the economic conditions to which you call attention. It must be evident to all that the dominating motive which has actuated this Congress is political expediency rather than lofty purpose to serve the public welfare."<sup>2</sup>

*Principal Legislation of the Session.* It is true that Congress left many problems half completed or untouched. The senate continued

<sup>1</sup> For previous notes on the work of Congress, see *American Political Science Review*, XIII, 251 (1919) and XIV, 74 (1920).

<sup>2</sup> In their telegram to the President the spokesmen for the railroad workers said that: "despite the revelations as to the profiteering scandal, Congress has done nothing to check the evil or to punish the evil-doers; that the cost of living continues to advance without a single remedial measure having been passed, and that there has not been even serious consideration of constructive legislation dealing with the serious problem of industrial unrest.

"In the circumstances it appears to us incredible that the responsible Government at Washington can assent to this seeming agreement to a continuation of a do-nothing policy, which means that the grave economic problems of the people are to be made the plaything of politics and politicians for the five months. It invites political chaos and business disaster. Congress should remain in session."

to spend a great part of its time on the Peace Treaty,<sup>3</sup> and both the senate and the house thought primarily of the effect of their activities on the presidential campaign rather than of efficient legislation; partisanship and hostility to the President were the dominant *motifs* of the session. Judged by the number of laws passed, Congress worked hard, but it is difficult to believe that most of the problems dealt with required the collective wisdom of 531 statesmen, drawing moderate salaries, enjoying extensive perquisites, meeting in a magnificent building for five months, and printing the results of their deliberations and of their meditations (under leave to print) to the extent of some millions of words.<sup>4</sup>

<sup>3</sup> The debate in the senate on the Peace Treaty is exhaustively considered by George A. Finch, "The Treaty of Peace with Germany in the United States Senate: An Exposition and a Review." 14 *American Journal of International Law*, 155-206; reprinted in *International Conciliation*, No. 153, August, 1920.

<sup>4</sup> For an estimate of the work of Congress considerably more flattering and, unconsciously, somewhat amusing, see the review of the legislative session by Mr. Mondell, Republican floor leader in the house, published (under leave to extend remarks) *Congressional Record*, June 21, 1920, pp. 9467-9479. Mr. Mondell inserted in his remarks the following statistical comparison of the Sixty-fifth and Sixty-sixth Congresses:

HOUSE OF REPRESENTATIVES

	FIRST SESSION, SIXTY-SIXTH CON- GRESS	FIRST SESSION, SIXTY-FIFTH CON- GRESS	SECOND SESSION, SIXTY-SIXTH CON- GRESS	SECOND SESSION, SIXTY-FIFTH CON- GRESS	FIRST AND SECOND SESSIONS SIXTY- SIXTH CONGRESS	FIRST AND SECOND SESSIONS SIXTY- FIFTH CONGRESS
Convened.....	May 19, 1919	Apr. 2, 1917	Dec. 1, 1919	Dec. 3, 1917		
Adjourned.....	Nov. 19, 1919	Oct. 6, 1917	June 5, 1920	Nov. 21, 1918		
Calendar days.....	184	188	188	354	372	542
Actual days in session.....	144	114	146	247	290	361
Bills introduced.....	10,735	6,511	3,725	6,661	14,460	13,172
Joint resolutions introduced.....	249	163	132	189	331	352
Simple resolutions intro- duced.....	397	173	193	279	590	452
Concurrent resolutions in- troduced.....	38	26	23	35	61	61
Total bills and reso- lutions.....	11,419	6,873	4,073	7,164	15,402	14,037
Public laws:						
Approved.....	71	91	193	152	264	243
Without approval.....	20				20	
Over veto.....	2				2	
Total public laws.....	93	91	193	152	286	243

Eight hundred and fifty-eight reports were made from committees, while 618 were made during the corresponding sessions of the Sixty-fifth Congress.

During the session Congress passed 193 public laws, 31 public resolutions, 67 private laws, and one private resolution. Almost without exception the private laws were for the relief of various individuals and corporations which had claims against the government, but many of the public laws were of such a character that it is difficult to believe that they required consideration by Congress. Of these 49 were purely local in character, and, in addition, 44 related to bridges, 8 to the District of Columbia, and 2 changed the names of steamers. Congress gave a charter to the Roosevelt Memorial Association and amended that of the National Educational Association. Provision was made for the coinage of fifty cent pieces to commemorate the one hundredth anniversary of Maine's admission to the Union; Alabama, however, will have to be content with a special issue of quarters. The Pilgrims—for the three hundredth anniversary of their landing—were given the same honor as Maine. Of the remaining so-called public laws, a number dealt with the Indians and with minor questions of administrative powers. Judged by the legislative grist, Congress spends an astounding proportion of its time on picayune matters, to say nothing of the private legislation which is, by all odds, the chief interest of many members.<sup>5</sup>

Of the many measures which Congress passed, only a few are worth mentioning here.<sup>6</sup> A long needed civil service retirement law (Public

<sup>5</sup> It is interesting to compare this situation with that which obtains in the English house of commons. A table in *The Liberal Year Book for 1920* (p. 136) shows that, from 1906 to 1919, government business took from 92½ to 144 days of each session, while private members' motions took from 3½ to 27 days. The total number of public and local acts ranged from 87 to 168. Of the public general acts, from 27 to 105 were introduced by ministers; while the maximum of private members' bills passed in one year was 17, and from 1914-16 to 1918 no private members' bills became law. Local acts formed from one-third to two-thirds of the total number passed, most of these being provisional order acts and confirmation acts under the Private Legislation Procedure (Scotland) Act of 1899.

<sup>6</sup> In order that nothing of importance may be omitted, I include the list prepared by Mr. Mondell, *Congressional Record*, p. 9474: The railway transportation act. (Public No. 152.) The legislation for a national budget. (Veto, H. R. 9783.) Reform of the rules of the house and senate in the consolidation of committees as a part of the program of budget reform. (H. Res. 324.) The Army reorganization act. (Public No. 242.) The merchant marine shipping act. (Public No. 261.) The oil and coal land leasing law. (Public No. 146.) The water-power act. (H. R. 3184.) Act for the vocational rehabilitation of persons disabled in industry. (Public No. 236.) The civil service retirement act. (Public No. 215.) The act establishing a woman's bureau in the department of labor. (Public No. 259.) The peace resolution. (Veto, H. J.

No. 215; May 22) provides a maximum pension of \$720 and a minimum of \$180 for superannuated employees who, to be eligible, must have been in the government service for fifteen years and must contribute two and one half per cent of their salaries to the retirement fund. The maximum expenses of the government will probably not be more than \$10,000,000 annually, and the treasury estimates that the gain in efficiency will be at least five per cent or more than \$18,000,000 a year.

The Army and National Guard Reorganization Law (Public 242; June 4) was a barren victory for the war department.<sup>7</sup> The Merchant

Res. 327.) The act for the repeal of the war laws. (Pocket veto, H. J. Res. 373.) The act reclassifying and readjusting the salaries of postal employees. (Public No. 265.) The act increasing pensions to veterans of the Civil and Mexican Wars. (Public No. 190.) The act increasing pensions to veterans of the Spanish-American War and Philippine insurrection. (Public No. 256.) The act to exclude and expel anarchistic aliens. (Public No. 262.) The act increasing the efficiency and pay of commissioned and enlisted personnel of the Army, Navy, Marine Corps, Coast Guard, Coast and Geodetic Survey, and Public Health Service. (Public No. 210.) The act for examination and report on irrigation development of the Imperial Valley, Calif. (Public No. 208.) The act authorizing the United States Grain Corporation to provide relief to populations in Europe and the Near East by furnishing flour valued at \$50,000,000. (Public No. 167.) The act authorizing the secretary of war to transfer surplus motor-propelled vehicles, motor equipment, and road-making material to departments of the government and to the states. (Public No. 159.) The act providing for furnishing water supply for miscellaneous purposes in connection with reclamation projects. (Public No. 147.) Amendment of federal reserve act providing for corporations authorized to do foreign banking business. (Public No. 106.) The Sweet Act amending the war-risk insurance act, increasing the efficiency of the bureau and greatly liberalizing the provisions of the act in the payment of compensation to disabled soldiers, sailors, and marines. (Public No. 104.) Resolution authorizing the appointment of a commission to confer with the governments of the Dominion and certain provinces of Canada with a view of securing restriction on the exportation of pulp wood, with a view of reducing the price of print paper. (Pocket veto.) The act authorizing secretary of the treasury to purchase certain federal farm loan bonds. (Public resolution, No. 45.)

<sup>7</sup> On February 9, 1920 Democratic members of the house refused to forego an expression of their opinion on universal military training although the President asked that party action be deferred until the national convention. The vote was 88 to 37. President Wilson expressed his views in a letter to Secretary Baker asking him to "convey to appropriate members of the House, who will attend the caucus, my strong feeling against action by the caucus which will tend to interpose an arbitrary party determination to the consideration which this subject should receive from the best thought of the members of the House, considering alike the national emergencies which may confront us and the great disciplinary and other advantages which such a system plainly promises for the young men of the country."

Marine Shipping Act (Public 261; June 5) is a makeshift; it endeavors to help the American carrying trade, but calls for the denunciation of a number of our commercial treaty engagements. Anarchistic aliens were excluded (Public 262; June 5);<sup>8</sup> amendments were passed for the Federal Reserve Act (Public 170; April 13), the Farm Loan Act (Public 182; April 20) and the Revenue Act of 1918 (Public 185; April 23). The Edge Export Bill also became law (Public 106; December 24) and there was some water power (Public 280; June 10) and oil land leasing legislation (Public 146; February 25).<sup>9</sup> A railroad reorganization law was necessary before March 1, so the Esch-Cummins Bill (Public 152; February 28, 1920) was accepted.<sup>10</sup> President Wilson did not express an extreme view in what he said of the law.<sup>11</sup>

<sup>8</sup> Public protests were so great that Congress failed to pass any anti-sedition bill although, when first discussed, it seemed that its speedy enactment was assured. On January 10, 1920, the senate passed the Sterling Bill (S. 3317), and on January 12 the house judiciary committee reported the Graham Bill (H. R. 11430; report no. 536), recommending its passage. On January 14 the judiciary committee reported the Sterling Bill amended (report no. 542). Hearings before the rules committee of the house on a proposed rule to give the measure immediate consideration, showed such opposition (including that of Mr. Gompers and the American Federation of Labor) that the legislation was abandoned.

The house committee on the judiciary spent some time in investigating charges of radicalism against Louis F. Post, assistant secretary of labor (H. Res. 522). Victor Berger, who had been excluded from the house at the special session (November 10, 1919) by a vote of 311 to 1, was again (after being reelected from his district) refused permission to take his seat (January 10, 1920). The vote was 330 to 6 and Berger was not allowed to address the house in his own behalf.

<sup>9</sup> The water power bill was reported in the house of representatives on June 24, 1919 and passed on July 1. It did not pass the senate until January 15, 1920 and stayed in conference from January 17 until April 30. Action on the oil land leasing law was more expeditious, only six months being required for its passage. It was approved by the senate on September 3, by the house on October 30, and remained in conference until February 10, 1920.

<sup>10</sup> The legislative history of the law was as follows: S. 3288 (Cummins). Reported in senate, October 23, 1919. New senate report 304 (Nov. 10). H. R. 10453 substituted. H. R. 10453 (Esch). House Report 456 (Nov. 10, 1919). Passed house (Nov. 17). Reported in senate (Dec. 9). Passed senate (Dec. 20). Sent to conference (Dec. 20). Conference: house report 650 (Feb. 18). Agreed to in house (Feb. 21) and in senate (Feb. 23). Approved (Feb. 28), 1920.

<sup>11</sup> For discussions of the law, see *Proceedings of the Academy of Political Science*, January, 1920; *Monthly Labor Review* (U. S. Dept. of Labor), April, 1920; *New York Times Current History*, March, 1920; a symposium in *The Nation*, August 16, 1919; *Hearings before the Committee on Interstate and Foreign Commerce*, House of Representatives, 66th Cong., 1st Sess. (1919).

*History of appropriation bills, second session\**

BILL (S. R.) NO.	TITLE	HOUSE REPORT NO.	PASSED HOUSE	SENATE REPORT NO.	PASSED SENATE	SENT TO CONFERENCE	CONFERENCE REPORT (HOUSE) NO.	CONFERENCE REPORT AGREED TO	DATE APPROVED	LAW NO.
11223	Urgent def., hospitals and Empl. Comp. Com.....	502	1919 Dec. 18 1920		1919 Dec. 19 1920	1920		1920	1919 Dec. 24 1920	105
11368	Indian.....	522	Jan. 9	395	Jan. 28	Feb. 2	597	Feb. 4-5	Feb. 16	141
11578	Post Office.....	534	Jan. 15	461	Mar. 29	Mar. 31	802-834	Apr. 15-16	Apr. 24	187
11892	Rivers and harbors....	566	Jan. 22	513	Apr. 26	May 19-21	1045	June 4	June 5	263
11960	Dipl. and Consular....	571	Jan. 26	416	Feb. 10	Feb. 16	895-985-1038	May 25-27	June 4	238
12046	Second def. for 1920...	594	Feb. 5	426	Feb. 20	Feb. 24	683-701	Mar. 2-3	Mar. 6	155
12272	Agriculture.....	596	Feb. 14	469	Mar. 26	Mar. 26-31	{ 960-1029- 1033† }	May 29	May 31	234
12467	Military Academy. . .	620	Feb. 17	456	Mar. 1	Mar. 2	754	Mar. 20-22	Mar. 30	166
12610	Legislative. (H. R. 14100 substituted)...	652	Mar. 4	488	Apr. 1	Apr. 6	835-855	Apr. 22		Veto.
13108	Navy... ..	744	Mar. 23	514	Apr. 28	Apr. 28-M. 18	1067	June 1-2	June 4	243
13266	District of Columbia...	768	Mar. 30	530	Apr. 27	Apr. 29	1079-1103	June 3-4	June 5	245
13416	Pensions.....	788	Apr. 6	583	May 25				June 4	244
13555	Fortifications.....	814	Apr. 13	562	Apr. 30	May 1-3	973	May 13-15	May 21	214
13587	Army.....	821	Apr. 16	587	May 25	May 25-27	1100	June 3	June 5	251
13677	Urgent deficiency, rail- roads, etc.....	852	Apr. 20		Apr. 27	Apr. 30	921	May 3-4	May 8	195
13870	Sundry civil.....	905	May 11	617	May 26	May 27	1084	June 2	June 5	246
14100	Legislative.....	997	May 17		May 19				May 29	231
14335	Third def. for 1920....	1069	June 2	654	June 3	June 4		†	June 5	264

\* From the *Weekly Compendium*, June 9, 1920, p. 28.

† Also S. Doc 371.

‡ Senate receded from disagreement June 4.

**Appropriations and Pensions.** Thirteen regular and four deficiency appropriation bills were passed carrying a total of \$4,859,327.30, of which by far the greater part was for the expenses and continuing costs of the war and preparation for possible conflicts in the future.<sup>12</sup> The bills were not completed until late in the session and eight were signed by the President on the two last days. The legislative history of the measures is given by the table on another page.

Not a great deal of legislation unconnected with the grants of funds was attached to the appropriation acts in the form of riders. The Legislative, Executive and Judicial Appropriation Law (Public No. 231) abolished the subtreasuries; the Agricultural Law (Public No. 234) created a joint committee to investigate the practicability of establishing a system of short-time rural credits; the District of Columbia Law (Public No. 245) changed the half-and-half system of appropriations in the district (see House Report No. 531; Senate Report No. 636)

<sup>12</sup> Mr. Good, chairman of the house appropriations committee, prepared the following table showing the disposition of the amounts appropriated (*Congressional Record*, June 21, p. 9470):

<b>A. Appropriations incident mainly to past wars:</b>		
1. Soldiers and sailors of the war with Germany for compensation for death and disability, vocational training, hospital treatment, and return of remains from France.....	\$293,168,400.00	
2. Pensions incident to Mexican War, Civil War, Spanish-American War, and on account of regular Military and Naval Establishments.....	279,150,000.00	
3. Interest on the public debt.....	980,000,000.00	
4. Sinking fund; indefinite appropriation for the retirement of Liberty bonds and Victory notes, etc.....	- 260,800,000.00	
5. Federal operation and control of transportation systems and expenses incident to termination of Federal control.....	1,025,000,000.00	
		\$2,838,118,400.00
<b>B. Appropriations incident to present national defense:</b>		
1. Military Establishment.....	\$418,232,882.87	
2. Naval Establishment.....	437,724,580.00	
		855,956,962.87
<b>C. Appropriations incident to civil functions of government:</b>		
1. Postal Service.....	\$497,575,190.00	
2. Appropriations for all other services of the Government not enumerated.....	481,744,726.50	
		979,319,916.50
<b>D. Deficiency appropriations:</b>		
For the fiscal year 1920 (excluding \$300,000,000 for Federal control of railroads and including \$85,000,000 for war-risk insurance compensation, \$23,000,000 for vocational rehabilitation of soldiers and sailors, \$13,166,187 for care of war-risk patients, and \$14,000,000 for payment of deficit on account of Federal operation of telegraph and telephone lines) .....		186,485,048.22
Grand total.....		\$4,859,890,327.30

and transferred the administration of the school teachers' retirement act from the treasury department to the district commissioners; the Sundry Civil Law (Public No. 246) authorized loans to relieve car shortage on the railroads, prohibited the shipping board emergency fleet corporation from letting contracts for additional vessels and issuing periodicals, authorized the exportation of birch timber from Alaska, and contained some miscellaneous provisions on monuments and memorials, national parks, public lands, reclamation, and the Coast and Geodetic Survey; and the Third Deficiency Law (Public No. 264; 1920) provided for the payment of the transportation costs of wives married to American soldiers in Europe.

The pension appropriations required \$279,150,000. A total of \$5,617,520,402.39 has now been paid by the government to pensioners. There are still 81 widows of the war of 1812—presumably very young women who married old men—and they received \$17,704.<sup>13</sup>

*Politics: The Bonus and Ireland.* The shadow of the ex-soldier and Irish votes hovered over congressional deliberations, particularly in the house of representatives. "Permanent, constructive legislation" made the session "historic," if Mr. Mondell is to be believed, but this "constructive legislation" did not bother the house nearly so much as the proposed measure providing adjusted compensation for those who served in the war.

With various organizations demanding a cash bonus from a Congress whose members were shortly to stand for reelection, it is not surprising that the house acted, yet it probably would not have had the temerity if there had been any chance of the measure receiving consideration in the senate. It was probable, however, that the upper house would not have the time or the desire to bring the bill to a vote (this was the case), and that, if it were brought up, the opposition, through a filibuster, if necessary, would force its defeat. Liberal provisions had been made for compensating and educating disabled soldiers (Public No. 104) and the anticipated economic effects of finding sources of revenue for a huge cash bonus, with the subsequent orgy of spending and higher prices, were sufficient to prevent the bill from becoming law even if a cash gift had been otherwise unobjectionable and the measure had been less of a bid for political support.<sup>14</sup>

<sup>13</sup> See 66th Cong., 2d Sess., Senate Report No. 583.

<sup>14</sup> Another important phase of the bonus bill will be discussed in a later article on congressional procedure.



Both houses engaged in political manoeuvring on the Irish question. The senate added a reservation to the Treaty of Versailles affirming sympathy for the aspirations of the Irish people and expressing the hope that the time was "at hand" when Ireland would have a government of its own choosing. Eighty-eight members of the house—62 Democrats and 26 Republicans—signed a message to Mr. Lloyd George protesting against the imprisonment without trial of persons arrested in Ireland for political offenses. Bills were introduced in the house to provide salaries for an American minister to and consuls in Ireland. On May 28 the house foreign affairs committee reported favorably a concurrent resolution (H. Con. Res. 57; House Report No. 1063) viewing "with concern" present conditions in Ireland and expressing "sympathy with the aspirations of the Irish people for a government of their own choice." Chairman Porter of the committee sent the resolution to Secretary of State Colby for his opinion. The latter replied that he saw "nothing to interfere" with the adoption of the resolution. It was not clear whether Secretary Colby also was thinking of the Irish vote, or whether he was willing for the Republican Congress to go ahead and play fast and loose with a question of recognition which is purely within the province of the executive. No further action was taken on the resolution, however.

*The President and Legislation.* The session presented a marked contrast from those of Mr. Wilson's first administration and during the war when presidential influence on legislation was very powerful. In only a very few cases did President Wilson express himself on pending legislative proposals and then, so far as positive action was concerned, his advice was not accepted. The senate paid no attention to his wishes with regard to the Peace Treaty and Congress adopted a resolution (S. Con. Res. 27; H. Doc. No. 791): "That the Congress hereby respectfully declines to grant to the Executive the power to accept a mandate over Armenia as requested in the message of the President dated May 24, 1920."

The President exercised his veto power several times, but in no case was Congress able to override it. He returned the Legislative Appropriation Bill because it limited the authority of the executive with regard to printing. Section 8 provided that no periodical publication could be issued by a government department until the authorization of the joint congressional committee on printing had been secured.<sup>15</sup>

<sup>15</sup> Congress was considerably worried by the paper shortage. The *Congressional Record* was not circulated for the last week of the session because the

"I regard the provision in question," Mr. Wilson declared, "as an invasion of the province of the executive and calculated to result in unwarranted interferences in the processes of good government, producing confusion, irritation, and distrust. The proposal assumes significance as an outstanding illustration of a growing tendency which I am sure is not fully realized by the Congress itself and certainly not by the people of the country. For that reason I am taking the liberty of pointing out a few examples of an increasing disposition, as expressed in existing laws and in pending legislative proposals, to restrict the executive departments in the exercise of purely administrative functions." Mr. Wilson instanced several regulations of the joint committee on printing and the public buildings commission,<sup>16</sup> which has the power to order executive departments out of the buildings they now occupy. The President also referred to the fact that when the Legislative Appropriation Bill was in the senate an amendment (later eliminated in conference) was added transferring the bureau of efficiency from the jurisdiction of the President to that of Congress.

For similar reasons President Wilson vetoed the budget bill. He objected to the provision "that the comptroller general and the assistant comptroller general, who are to be appointed by the President with the advice and consent of the Senate, may be removed at any time by a concurrent resolution of Congress after notice and hearing, when,

public printer did not have the necessary paper and the quality used throughout the session was extremely bad. On March 1 Senator Smoot gave notice that thereafter he would object to the insertion in the *Congressional Record* of any matter other than resolutions from state legislatures or city councils. The senate proceedings became freer than usual from newspaper editorials, poems, and addresses by various constituents, but even so, Senator Smoot's objections did not suffice, for senators could read the editorials and they would thus appear in the *Record*.

The joint committee on printing presented a very valuable report (Senate Report No. 265; *Congressional Record*, April 12, p. 5957) which showed that from July 1, 1916, to September 15, 1919, 30,144,362 copies of speeches by government officers (other than members of Congress) had been printed at public expense.

The treaty proceedings in the senate took up 3000 pages or 6,300,000 words. Senator Smoot "started to segregate the pages of matter that have been inserted in the *Record* at the request of senators, including newspaper articles, editorials, and letters from citizens; but it soon developed that it was altogether impossible to put them in any reasonable number of books. So it was concluded to abandon the effort." *Congressional Record*, January 31, p. 2438.

<sup>16</sup> This consists of two senators, two representatives, the superintendent of the capitol buildings and grounds, and the supervising architect of the treasury.

in their judgment, the comptroller general or assistant comptroller general is incapacitated or inefficient, or has been guilty of neglect of duty, or of malfeasance in office, or of any felony or conduct involving moral turpitude, and for no other cause and in no other manner except by impeachment. The effect of this is to prevent the removal of these officers for any cause except either by impeachment or a concurrent resolution of Congress. It has, I think, always been the accepted construction of the Constitution that the power to appoint officers of this kind carries with it, as an incident, the power to remove. I am convinced that the Congress is without constitutional power to limit the appointing power and its incident, the power of removal derived from the Constitution."

The house refused by a vote of 178 to 103 to pass the bill over the President's veto. The objectionable provision was eliminated and the measure passed the house, but a filibuster in the senate prevented its consideration there.<sup>17</sup>

President Wilson, as was expected, vetoed the resolution declaring a separate peace with Germany (H. J. Res. 327),<sup>18</sup> and killed by a pocket veto the resolution (H. J. Res. 373) terminating the emergency legislation of the war, with the exception of food control, District of Columbia rents, and the trading with the enemy act.

A very interesting question as to the President's power over legislation was raised when President Wilson signed eight bills after the adjournment of Congress. Fifty-one laws were signed on the last day of the session. It may have been that the executive was unable to give his approval to those signed later or that he wished to raise the question of his power. The usual practice, with Congress rushing laws through madly during the closing hours of the session, makes the President choose between hasty approval or pocket vetoes. Announcement of the innovation was made from the White House on June 18:

"The President having been advised by the Attorney General in a formal opinion that the adjournment of Congress does not deprive him of the 10 days allowed by the Constitution for the consideration of a measure, but only in case of disapproval of the opportunity to

<sup>17</sup> It is very doubtful whether the President's theory of the inability of Congress to limit his power of removal is correct. See an article by T. R. Powell, "The President's Veto of the Budget Bill," *National Municipal Review*, September, 1920.

<sup>18</sup> House Report 801, April 6, 1920. Passed house April 9. Senate Report 568, April 30. Passed senate May 15. House concurred in senate amendments May 21. Vetoed by the President May 27. H. D. No. 799.

return the measure with his reasons to the House in which it originated, has signed the following bills, each within the 10-day period, of course. The bills not signed failed to become laws under the usual practice."<sup>19</sup>

There would seem to be no reason of policy or constitutional law why this post-adournment signature is not valid.<sup>20</sup>

With reference to the Merchant Marine Law referred to above (p. 663), Secretary of State Colby announced on September 25, that the President had decided not to carry out the provisions of Section 34. This directed the termination of treaties which forbade the imposition of discriminating duties on foreign vessels and foreign borne imports entering American ports. "The Department of State," the announcement said, "has been informed by the President that he does not deem the direction, contained in section 34 of the so-called merchant marine act, an exercise of any constitutional power possessed by the Congress."<sup>21</sup>

*Control of the Purse.* Congress passed a bill creating a budget system which, as has been explained, was vetoed by the President on the ground that it unconstitutionally limited his power of appointment by seeking to prevent it from including the power of removal. The measure will doubtless pass at the next session and to prepare for its operation the house of representatives changed its rules so that all appropriation laws will be considered by the committee on appropriations. This is to consist of 35 members and will do the work of the

<sup>19</sup> The bills referred to as having been signed following adjournment of Congress were: H. R. 3184, water-power bill creating federal power commission. (Public 280.) H. R. 6407, for relief of Michael MacGarvey. (Private 73.) H. R. 13962, bridge, Monongahela River, Pa. (Public 283.) H. R. 13976, bridge, Allegheny River, Pittsburgh, Pa. (Public 284.) H. R. 13977, bridge, Allegheny River, Milvale, Pa. (Public 285.) H. R. 13978, bridge, Ohio River, McKees Rocks, Pa. (Public 286.) S. 547, to authorize enlistment of non-English speaking citizens and aliens in Army. (Public 281.) S. 4167, bridge, Mississippi River, St. Louis, Mo. (Public 282.)

The bills not signed and failing to become laws "under the usual practice" (pocket vetoes) are: H. R. 13329, surplus road machinery bill. H. J. Res. 373, repeal of war laws. S. J. Res. 152, Canadian wood pulp resolution.

The water power law is dated June 10, the others June 14.

<sup>20</sup> See the writer's article, "The Power of the President to Sign Bills after Congress has Adjourned," *Yale Law Journal*, November, 1920.

<sup>21</sup> On the respective power of the President and Congress with regard to the termination of treaties, see Corwin, *The President's Control of Foreign Relations*, p. 109 ff. It should be said, however, that a strong argument can be made in support of greater authority than Professor Corwin concedes the executive and even as to the legality of President Wilson's action in refusing to obey section 34 of the merchant marine law.

8 committees which now report 13 supply bills.<sup>22</sup> The new rules also provide that if a bill comes back from the senate with amendments granting funds not already authorized by law,<sup>23</sup> the conference report shall not "be agreed to by the managers on the part of the house unless specific authority to agree to such amendment shall be first given by the house by a separate vote on every such amendment."<sup>24</sup>

<sup>22</sup> At the present time the appropriations committee handles the Legislative, Executive and Judicial, the Sundry-Civil, Fortifications, the District of Columbia, and Pensions bills; the military affairs committee, two bills for the Army and the Military Academy, and the Agricultural, Foreign Affairs, Naval, Post Offices, and Indian Affairs Committees have authority to report appropriations for these purposes. Under clause 56 of rule 11 of the House of Representatives, the river and harbors committee has the authority to report (at any time) "bills for the improvement of rivers and harbors." This is changed by the new rules so that the committee has the right to report "bills authorizing the improvement of rivers and harbors." The power to report appropriations is thus taken away.

<sup>23</sup> This is at present prevented by rule 21, clause 2.

<sup>24</sup> On May 27, 1920, the senate amended its rules so that, instead of having 17 or 19 members (in the case of the appropriations committee it is 20) as at the present time, all the principal committees of the senate will consist of 15 members. The others will consist of 11, 9, and 7 members. Rule 25 of the standing rules of the senate. See *Congressional Record*, May 27, p. 8335.

## LEGISLATIVE NOTES AND REVIEWS

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**Legislative Resolutions and Memorials.** The Constitution of the United States guarantees to the people the right to petition the government for a redress of grievances, and this right is frequently exercised by the various states through the agency of the legislatures. Many resolutions represent a genuine and state-wide sentiment prevalent among the various constituencies; others represent merely a local or racial sentiment which for political reasons a legislature is unwilling to ignore; and all are ostensibly designed to influence Congress on questions of domestic and foreign policy. During the legislative sessions of 1919 over 300 resolutions and memorials were adopted, of which 206 are of general public interest and 117 on questions of local interest.

**League of Nations.** The legislatures of Arkansas, South Carolina, Tennessee, Texas and Nevada adopted resolutions indorsing the League of Nations without specifically stipulating any reservations;<sup>1</sup> Arizona adopted two resolutions, one merely indorsing the league and the other indorsing it "relatively as presented" and "to the utmost degree consistent with the safeguarding and preservation of our national sovereignty."<sup>2</sup> Tennessee likewise adopted a resolution condemning those senators who opposed the league and indorsing Wilson for its first president, and New Jersey offered to provide a meeting place for the league.<sup>3</sup> Idaho and West Virginia adopted resolutions opposing and condemning the league.<sup>4</sup> Arizona, Arkansas and Tennessee adopted resolutions approving the judgment and expressing confidence

<sup>1</sup> Arkansas, *Session Laws*, 1919, pp. 494, 501 and 515; Tennessee, *Session Laws*, 1919, pp. 826 and 873; Nevada, *Session Laws*, 1919, p. 479; Texas, *Session Laws*, 1919, p. 361, Second Called Session, 1919, p. 454.

<sup>2</sup> *Session Laws*, 1919, pp. 378 and 383.

<sup>3</sup> Tennessee, *Session Laws*, 1919, pp. 789 and 875; New Jersey, *Session Laws*, 1919, p. 706.

<sup>4</sup> Idaho, *Session Laws*, 1919, p. 614; West Virginia, *Special Session Laws*, 1919, p. 47.

in the President's international policies.<sup>5</sup> Tennessee, Texas and Alabama approved the fourteen points as a basis of international settlement, and both Tennessee and Oklahoma approved the President's trip to Europe.<sup>6</sup>

*National Self-Determination.* Sympathy for the various small nationalities was expressed in resolutions adopted by a number of states. Illinois, California, Montana and Nevada adopted resolutions urging that the Irish be given a hearing at the Peace Conference;<sup>7</sup> Illinois and Pennsylvania urged that the Italians be heard at the Peace Conference relative to the restoration of lands formerly belonging to Italy and necessary for its economic development, including Venetia, Julia, Fiume and Dalmatia.<sup>8</sup> Illinois, Pennsylvania and Tennessee adopted resolutions requesting the United States government to investigate the alleged persecution of the Jewish people in Poland, Ukraine and Rumania, and favored the establishment of a Jewish commonwealth in Palestine in accordance with the declaration of the British government of November 2, 1917; and the granting to the Jewish people in every land all rights and privileges enjoyed by other citizens or subjects.<sup>9</sup> Oregon urged the establishment of a republic for the Armenians.<sup>10</sup>

*Aliens and Immigrants.* Alabama adopted a resolution favoring the restriction of immigration from Europe, especially from the enemy countries.<sup>11</sup> Kansas favored the passage of a naturalization law binding the immigrant to be law abiding, that he would not withdraw from the obligation thus taken and that in time of need he would bear arms.<sup>12</sup> Minnesota adopted a resolution urging the establishment of a system whereby a prospective immigrant would be examined by a representative of the United States government in his home country at least

<sup>5</sup> Arizona, *Session Laws*, 1919, p. 377; Arkansas, *Session Laws*, 1919, p. 513; Tennessee, *Session Laws*, 1919, p. 761.

<sup>6</sup> Tennessee, *Session Laws*, 1919, p. 824; Alabama, *Session Laws*, 1919, p. 3; Oklahoma, *Session Laws*, 1919, p. 482; Texas, *Session Laws*, 1919, p. 361.

<sup>7</sup> Illinois, *Session Laws*, 1919, p. 1008; California, p. 1461; Montana, p. 641; Nevada, p. 481.

<sup>8</sup> Illinois, *Session Laws*, 1919, p. 1009; Pennsylvania, p. 1226.

<sup>9</sup> Illinois, *Session Laws*, 1919, p. 1010; Pennsylvania, pp. 1224, 1232, 1234, 1235; Tennessee, pp. 754, 807 and 877.

<sup>10</sup> *Session Laws*, 1919, p. 831.

<sup>11</sup> *Session Laws*, 1919, p. 58.

<sup>12</sup> *Session Laws*, 1919, p. 454.

three months before his departure.<sup>13</sup> California urged the passage of a law prohibiting any immigrant from entering the United States except upon the presentation of a certificate from his own government showing that he is of good moral character and a law abiding person; upon his entry into the country, the immigrant would be required to take an oath to support the government and to report once every six months by submitting the testimony of two reputable citizens that he has complied with the obligations of his oath.<sup>14</sup> Oregon, Idaho, California, Florida and Montana demanded the passage of laws providing for the deportation of all aliens who withdrew their declarations of intention to avoid being drafted into the army or who violated the espionage act; the cancellation of their naturalization papers; and prohibiting alien enemies from engaging in business of any kind, and prohibiting undesirable aliens from becoming citizens.<sup>15</sup> In the Oregon resolution the names of the aliens who withdrew their declarations of intention are given.

*Soldiers, Sailors and Marines.* Numerous resolutions were adopted relating to the welfare of soldiers, sailors and marines of the World War, including such questions as the establishment of farm homes, providing a bonus, assigning uniforms, the speedy discharge and demobilization, adjusting homestead entries, return of the bodies of soldiers from Europe, unemployment and the adjustment of the war risk insurance. Alabama, Arizona, Arkansas, California, Illinois, Indiana, Texas, and West Virginia adopted resolutions urging Congress to pass the measure recommended by Secretary Lane appropriating \$100,000,000 to place returned soldiers on farms;<sup>16</sup> Colorado adopted a resolution urging Secretary Lane to open to settlement, especially in the interests of soldiers, the Southern Ute Indian lands in La Plata and Archuleta counties;<sup>17</sup> and Idaho favored a broad policy in reclaiming lands for the purpose of giving employment to soldiers.<sup>18</sup> Five states adopted resolutions urging Congress to provide that all discharged soldiers and sailors be permitted to retain their uniforms and over-

<sup>13</sup> *Session Laws*, 1919, p. 769.

<sup>14</sup> *Session Laws*, 1919, p. 1540.

<sup>15</sup> *Session Laws*, 1919, Florida, Regular Session, p. 343; Idaho, pp. 589 and 607; California, p. 1548; Montana, p. 648; and Oregon, p. 867.

<sup>16</sup> *Session Laws*, 1919: Alabama, p. 68; Arizona, p. 379; Arkansas, p. 508; California, p. 1446; Illinois, p. 1014; Indiana, p. 285; Texas, Regular Session, p. 372; West Virginia, p. 513.

<sup>17</sup> *Session Laws*, 1919, p. 768.

<sup>18</sup> *Session Laws*, 1919, p. 597.



coats;<sup>19</sup> and twelve states urged the awarding of a bonus of \$200 or three or six months' pay.<sup>20</sup> Arizona urged the discharge from the army first of men who were married and had wives and children to support, and seven other states favored the speedy return of the troops from Europe and the demobilization of those still in the training camps.<sup>21</sup> Three states requested that local divisions be demobilized at some point within the state after having been paraded in one of the larger cities;<sup>22</sup> six states requested the war department to supply enough cannon captured from the Germans to make badges for all soldiers from the state who participated in the war, or to be placed in the state house grounds or in some public park as at the state soldiers' home, or the state armories.<sup>23</sup> Three states adopted resolutions urging Congress to recognize the local boards in some suitable way and commending Congress for passing Senate Joint Resolution No. 204 extending to members of local and district boards, government appeal agents and members of medical and legal advisory boards the thanks of Congress for services rendered under the selective draft act and authorizing the President to appoint by brevet commissions the members of such local and district boards and to present them with appropriate medals.<sup>24</sup> Idaho and Montana urged Congress to grant soldiers the right to apply their period of service in the war on the prescribed residence required to secure a homestead claim.<sup>25</sup> Other resolutions adopted urged Congress to direct the army and navy to furnish to each state a list of the names of the persons from that state mustered into the service;<sup>26</sup> protesting against the honorable discharge of conscientious objectors with

<sup>19</sup> *Session Laws*, 1919: Arizona, p. 397; Idaho, p. 605; Pennsylvania, p. 1220; Montana, p. 643; Tennessee, pp. 792 and 842.

<sup>20</sup> *Session Laws*, 1919: Illinois, p. 1014; Kansas, p. 455; Minnesota, p. 758; California, p. 1437; Alabama, p. 26; Pennsylvania, p. 1236; Montana, p. 635; Oregon, p. 866; Tennessee, pp. 792 and 842; Nebraska, p. 63; South Carolina, p. 659; Indiana, pp. 869 and 871.

<sup>21</sup> *Session Laws*, 1919: Arizona, p. 399; Alabama, p. 57; Illinois, p. 1003; Minnesota, p. 762; California, p. 1541; Pennsylvania, pp. 1225, 1220; North Dakota, p. 101; Texas, p. 363.

<sup>22</sup> *Session Laws*, 1919: Illinois, p. 1018; Kansas, pp. 457 and 473; Texas, p. 366.

<sup>23</sup> *Session Laws*, 1919: Idaho, p. 616; West Virginia, p. 519; California, pp. 1480 and 1539; Pennsylvania, p. 1223; Oklahoma, p. 483; Oregon, p. 871.

<sup>24</sup> *Session Laws*, 1919: Colorado, p. 763; Pennsylvania, p. 1221; and Tennessee, p. 794.

<sup>25</sup> *Session Laws*, 1919: Idaho, p. 585; Montana, p. 623.

<sup>26</sup> Idaho, *Session Laws*, 1919, p. 596.

full pay;<sup>27</sup> indorsing the American Legion;<sup>28</sup> urging the passage of the Kenyon Bill No. 5397 providing for the commencement of public works to provide employment for soldiers during the period of demobilization and readjustment;<sup>29</sup> to include Spanish War veterans in the distribution of government lands;<sup>30</sup> increasing the pensions of maimed soldiers of the Civil War, and to pension all veterans of the Spanish-American War;<sup>31</sup> to return the bodies of soldiers from Europe, and amendment of the law authorizing soldiers to continue their war risk insurance by paying quarterly, semi-annual or annual premiums; and increasing the allowance under the war risk insurance act;<sup>32</sup> and the passage of laws to remedy the distress of unemployed soldiers.<sup>33</sup>

*Education.* Colorado, Minnesota, Montana, Oregon and Tennessee favored the pending bills providing for the creation of a department of education and the coöperation of the states and the federal government in matters of education; the bills making available for industrial and other cripples the same advantages for retraining and rehabilitation as are afforded to soldiers wounded in the line of duty, and guaranteeing federal aid for their reëducation and placement; providing for the education of illiterates and the Americanization of immigrants by federal aid and coöperation with the several states; providing for a bureau of citizenship and Americanization; and providing for the equalization of educational opportunities and raising the pay of rural teachers.<sup>34</sup>

*Federal Retirement Annuities.* California and Oregon favored the passage of the pending bill providing retirement annuities for federal employees upon reaching the age of 68 years.<sup>35</sup>

*Woman Suffrage.* The legislatures of thirteen states (including Arizona, California, Idaho, Illinois, Indiana, Kansas, Minnesota, Montana, Nebraska, Nevada, Oregon, Texas and Wyoming) adopted

<sup>27</sup> Idaho, *Session Laws*, 1919, p. 611.

<sup>28</sup> Illinois, *Session Laws*, 1919, p. 1005.

<sup>29</sup> West Virginia, *Session Laws*, 1919, p. 518.

<sup>30</sup> California, *Session Laws*, 1919, p. 1453.

<sup>31</sup> Pennsylvania, *Session Laws*, 1919, pp. 1222 and 1233.

<sup>32</sup> *Session Laws*, 1919: Oklahoma, 1919, pp. 472 and 482; Texas, Second Called Session, 1919, p. 452.

<sup>33</sup> Oregon, *Session Laws*, 1919, p. 841.

<sup>34</sup> *Session Laws*, 1919: Colorado, p. 773; Minnesota, p. 759; Montana, pp. 645 and 650; Oregon, pp. 866 and 881; Tennessee, p. 777.

<sup>35</sup> *Session Laws*, 1919: California, p. 1438; Oregon, p. 835.

resolutions urging Congress to pass the federal woman suffrage amendment.<sup>36</sup>

*Return of Railroads.* Idaho, Alabama, Montana, Oregon and Tennessee petitioned Congress to provide for the return of the railroads and other public utilities to private ownership.<sup>37</sup>

*Freight Rates.* Illinois and Indiana adopted resolutions favoring the reduction of freight rates on building material; and Montana favored a reduction in homeseeker's rates from all eastern points.<sup>38</sup>

*National Highways.* Arizona urged the construction of an ocean to ocean highway along the route most suitable for military purposes. Nevada, Oregon, Pennsylvania, Tennessee and Wyoming favored the establishment of a federal system of highways.<sup>39</sup>

*Cotton.* Alabama, Georgia, Oklahoma, Tennessee, Florida and South Carolina adopted a resolution urging the planters of the South to hold their spot cotton until the price had advanced; recommending the removal of the embargo on cotton; providing for the establishment of American steel steamship lines between the Gulf and South Atlantic and foreign ports; prohibiting the importation of Egyptian cotton; and urging Congress to take the necessary action to regulate the New York and New Orleans cotton exchanges to prevent unjustifiable fluctuations.<sup>40</sup>

*Guaranteed Price of Wheat.* Oklahoma and Montana urged that the guaranteed price of wheat for 1919 crop be kept at \$2.26, and protested against changing the limit of the guaranteed price from December 31 to October 31, 1919.<sup>41</sup>

*War Minerals.* Several of the western, metal-producing states adopted resolutions urging Congress to provide for compensation for those persons who had sustained losses due to the overproduction of

<sup>36</sup> *Session Laws*, 1919: Arizona, p. 378; California, p. 1392; Idaho, p. 585; Illinois, p. 1020; Indiana, p. 845; Kansas, p. 451; Minnesota, p. 757; Montana, p. 640; Nebraska, p. 65; Nevada, p. 474; Oregon, p. 864; Texas, Regular Session, 1919, p. 363; Wyoming, p. 271.

<sup>37</sup> *Session Laws*, 1919: Idaho, p. 600; Alabama, p. 23; Montana, p. 627; Oregon, p. 886; Tennessee, p. 771.

<sup>38</sup> *Session Laws*, 1919: Illinois, p. 1015; Indiana, p. 847; Montana, p. 654.

<sup>39</sup> *Session Laws*, 1919: Arizona, p. 397; Nevada, p. 489; Oregon, p. 887; Wyoming, p. 279; Pennsylvania, p. 1229; Tennessee, p. 848.

<sup>40</sup> *Session Laws*, 1919: Alabama, pp. 25 and 50; Florida, Regular Session, p. 355; Special Session, 1918, p. 113; Georgia, pp. 497 and 500; Oklahoma, p. 487; Tennessee, pp. 743 and 809; South Carolina, p. 660.

<sup>41</sup> *Session Laws*, 1919: Oklahoma, p. 470; Montana, p. 637.

certain minerals used in carrying on the war, including manganese, chromite, tungsten, pyrites and chrome.<sup>42</sup>

*Bimetallism.* Colorado and Nevada urged Congress to petition the Peace Conference at Versailles to provide for the adoption of the bimetal standard of money for all nations.<sup>43</sup>

*Lower California.* Arizona and California adopted resolutions urging Congress to take the necessary steps to purchase of the Republic of Mexico, the state of Lower California, the Coronado Islands, and 10,000 square miles of the state of Sonora lying north of 31° 20' north latitude.<sup>44</sup>

*Influenza.* Alabama and Oklahoma urged Congress to appropriate funds ranging from \$250,000 to \$2,000,000 to investigate the causes of and eradicate the "flu."<sup>45</sup>

*Miscellaneous.*<sup>46</sup> The miscellaneous resolutions adopted urged Congress to enact the necessary legislation to continue nitrate development at Mussel Shoals, Tennessee; to change the name of the Panama to the Roosevelt Canal; to reimburse shippers for grain shipped in sacks; to provide that federal aid for post roads not expended during any year may be available for the following year; to create a national forest in Thunder Mountain county, Idaho; to prevent discrimination in long and short haul freight rates; to so modify the federal game laws and regulations as to provide an open season for ducks and geese from February 15 to March 31; the repeal of the daylight saving law; the development of a constructive forestry policy, in coöperation with the states, to insure the continuance of the timber supply; to open the Assawoman Canal from Chincoteague, Virginia, to Lewes, Delaware; urging economy in national expenditures; imposing a tariff on zinc to protect the domestic supply; the improvement of the Chesapeake and Ohio Canal to relieve freight traffic; the passage of a grain grading bill

<sup>42</sup> *Session Laws*, 1919: Montana, pp. 625 and 630; Oregon, p. 865; Nevada, p. 477; and Colorado, p. 776.

<sup>43</sup> *Session Laws*, 1919: Colorado, p. 774; Nevada, p. 483.

<sup>44</sup> *Session Laws*, 1919: Arizona, p. 389; California, p. 1440.

<sup>45</sup> *Session Laws*, 1919: Alabama, p. 105; Oklahoma, p. 472.

<sup>46</sup> *Session Laws*, 1919: Alabama, p. 168; Idaho, pp. 586, 593, 595, 598 and 612; Illinois, pp. 1000, 1001 and 1012; Delaware, p. 675; Kansas, pp. 447, 464; Maryland, 1918, p. 1021; Minnesota, pp. 760, 761, 763 and 764; Wyoming, p. 274; West Virginia, pp. 503 and 43, Spec. Session; California, pp. 1439, 1441, 1451, 1452, 1478, 1489, 1490, 1501 and 1538; Georgia, pp. 509 and 1428; Oklahoma, p. 473; Montana, pp. 629, 631 and 646; Oregon, pp. 873, 882 and 888; and Nevada, p. 480; Indiana, p. 851; Florida, pp. 357, 343, 357, 360; Texas, pp. 378, 372.

and a modification in the present grades of grain; coöperation with Canada in canalizing the St. Lawrence river for the passage of ocean-going vessels; prescribing the standards of motor gasoline according to the specifications as recommended by the committee on standardization of petroleum in their report of October 2, 1918; indorsing the federal free employment service; indorsing the campaign for funds for the relief of Armenian, Syrian, Greek and other war sufferers; the passage of laws permitting the use of the United States army to preserve order and suppress insurrections in the states; opposing the cancellation of the war loan to the Allies on the theory that the enemy countries should pay; the cancellation of contracts for ships let to foreign ship yards to give jobs to demobilized soldiers; the appointment of a river regulation commission to coördinate river regulation projects; the passage of stricter legislation for the examination of national banks; the development of the merchant marine to secure wider markets and the provision for adequate housing for workers employed in the shipbuilding industry; recommending a state inheritance tax on estates up to \$5,000,000 in value and a federal tax on those above that amount; the restoration of the two cent ad valorem tariff tax on rice; trial before an international tribunal of persons of any rank who perpetrated crimes against noncombatants or violated international usages during the war; an international peace jubilee celebration in 1920 at Balboa Park, San Diego; to provide for the hydroelectric development of streams; the payment of pensions to Confederate soldiers on the same basis as Union soldiers; the return to the South of the tax collected on raw cotton between 1860 and 1867; urging the federal government not to interfere with intrastate telephone rates; opposing the passage of House Resolution 13324 which could be construed as government ownership of packing plants; the punishment and suppression of anarchists and revolutionary elements; the development of a merchant marine to handle the products of the Pacific coast; authority to take contracts for building ships for foreign countries; the passage of measures to prevent unemployment; and provision that an interstate carrier may be exempt from federal liability if it chooses to come under the provisions of the workmen's compensation act of the state; indorsing universal, compulsory military training; repeal of the act dividing the country into postal zones with graduated rates on newspapers; the establishment of engineering experiment stations in the several states to promote industrial and engineering research; and the enactment of federal reclamation legislation.

**Coöperative Associations.** In an effort to encourage the producer and the consumer of economic utilities to organize for mutual benefit, five state legislatures enacted in 1919 laws authorizing the organization of coöperative associations. Kentucky did likewise in 1918. Various names are included in the caption "Coöperative Association," namely: Coöperative Corporation, Society, Company, Exchange, Union. Pennsylvania requires the use of the word "Coöperation" in the name of the association and forbids all partnerships and corporations from so using the word "Coöperative" or any derivative thereof, unless such organization has been formed as a coöperative association according to the provisions of the act. Kentucky and Oklahoma provide similar prohibitions.

These coöperative associations may be organized in Wisconsin for the purpose of conducting any agricultural, dairy, mercantile, mining, manufacturing or mechanical business on the coöperative plan, and of acting as a selling agency for its members or patrons.<sup>1</sup>

Nebraska includes in coöperative associations organizations organized by producers or consumers, or jointly by producers and consumers, for the purpose of collective bargaining, marketing and purchasing, or other coöperative business activity, where the net profits of the association, after paying the cost of operation and capital charge, shall be distributed to the membership, not on a basis of capital investment, but on a basis of patronage.<sup>2</sup> Nebraska also authorizes the distribution of its earnings in part or wholly on the basis of, or in proportion to, the amount of property bought from or sold to members, or members and the other patrons, or if labor be performed or other services rendered to the corporation. Kentucky's authorized coöperative plan is a business concern that distributes the net profit of its business by: First, the payment of a fixed dividend upon its stock; Second, the remainder of its profits are prorated to its several stockholders or customers, or both, as provided by by-laws, upon their purchases from or sales to said concern or both such purchases and sales.<sup>3</sup>

Missouri allows the coöperative plan to have all the incidents, powers, and privileges of corporations, for the purpose of conducting any agricultural or mercantile business on the coöperative plan, including the buying, selling, manufacturing, storage, transportation, or other handling, by associations, of agricultural, dairy, or similar products,

<sup>1</sup> Wisconsin, *Session Laws*, 1919, ch. 371.

<sup>2</sup> Nebraska, *Session Laws*, 1919, p. 161.

<sup>3</sup> Kentucky, *Session Laws*, 1918, p. 662.

and including the transportation of such articles and their manufacture into products derived therefrom, and for the purpose of purchasing of or selling merchandise to all shareholders and others.<sup>4</sup>

Pennsylvania authorizes only coöperative agricultural associations instituted for the purposes of mutual help and not having a capital stock and not conducted for profit. In such associations are included dairying, livestock raising, poultry raising, bee keeping, and horticulture.<sup>5</sup>

Oklahoma includes livestock and irrigation. Pennsylvania provides that any member shall forfeit his membership upon proof being made to the association that he has ceased to be engaged in agriculture, dairying or horticulture.

In order to incorporate as a coöperative association under the Missouri laws it is required that there shall be paid into the state treasury a fee of fifty dollars for the first fifty thousand dollars or less, of capital stock, and the further sum of five dollars for each additional ten thousand dollars of its capital stock.

No shareholder in any coöperative association in Missouri may own shares of a greater aggregate par value than ten per cent of the aggregate par value of all shares of stock of such associations. In Oklahoma coöperative association stock must not be sold at less than its par value. Twenty per cent of the par value of the stock subscribed for must be paid in before the corporation commences business.<sup>6</sup>

The minimum number of persons who may incorporate as a coöperative association in Kentucky is three; in Pennsylvania and Wisconsin, five; in Missouri, twelve; and in Nebraska, twenty-five. Kentucky requires that the association shall be managed by not less than three directors, while Pennsylvania and Missouri requires at least five such officials.

Nebraska also authorizes the organization of coöperative credit associations, to be conducted upon the same general principle as the ordinary coöperative associations.

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**State Legislation, 1920.** A special issue of the *Bulletin* of the Public Affairs Information Service, for September 25, 1920, contains an index of state legislation passed during the present year. This includes the

<sup>4</sup> Missouri, *Session Laws*, 1919, p. 116.

<sup>5</sup> Pennsylvania, *Session Laws*, 1919, p. 466.

<sup>6</sup> Oklahoma, *Session Laws*, 1919, p. 211.

laws passed in nine states (Georgia, Kentucky, Maryland, Massachusetts, New Jersey, New York, Rhode Island, South Carolina and Virginia), of eleven in which regular sessions were held, and in four states (Idaho, Kansas, Washington and Wyoming) of the eighteen in which special sessions were held. Little legislation of importance resulted from the special sessions, many of which were called to act on the woman suffrage amendment to the Constitution of the United States.

Among the subjects of important legislation may be noted: intoxicating liquors (in Kentucky, New Jersey, New York and Rhode Island); rents (in Georgia, Massachusetts, New Jersey and New York); state aid to returned soldiers (in Massachusetts, New Jersey, New York, Rhode Island, Washington and Wyoming); and syndicalism (in Kansas and Kentucky).



## NOTES ON MUNICIPAL AFFAIRS

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**Charter Revisions and Home Rule.** Perhaps the most important proposed charter amendment to come before city voters at the November election of this year is that contained in the measure submitted by the Massachusetts legislature providing for the amendment of the charter of Boston. The act changes the composition of the city council, composed at present of nine members elected at large, by providing for a council of fifteen members to be elected by districts, the entire council to be chosen every two years. The measure is opposed by the leading civic organizations of the city, such as the Good Government Association, Boston Charter Association, and the chamber of commerce. It has the support of both the Democratic and Republican organizations, who anticipate that a restoration of party-machine control will be facilitated both by the renewal of the entire council with the election of the mayor every four years and by the district system of electing councilmen.

The charter of Galveston, the oldest "commission charter," was radically amended at a recent election at which twenty-six amendments were adopted. The more important amendments make the following additions and changes in the charter: establishing the recall for all elective offices, the initiative, and the referendum; empowering the city commission to regulate rates, fares and services of public utilities, and to compel interchange of services by the various utilities; authorizing the commission to increase salaries of municipal employees, to establish the eight-hour shift in the police department and the two-platoon system in the fire department, and to install a system of workmen's compensation for municipal employees generally; changing the office of assessor and collector of taxes from an appointive to an elective office.

Under the constitutional amendment adopted in Maryland in 1915, authorizing any county to frame and adopt its own charter, a commission was elected in November, 1919, to draft a charter for Baltimore

county. The county of Baltimore does not include within its boundaries the city of Baltimore; but it embraces many unincorporated urban communities within which all local functions—including such distinctly municipal services as fire and police protection, sewage disposal, public health administration—are administered by the county government. In May of this year the charter commission reported a county-manager charter, substantially similar to the city-manager plan. Powers of local discretion, in defining the general scope of powers and determining the number and type of county officials, are somewhat restricted under the home rule amendment, which perpetuates all officers (with the exception of the county commissioners) created by the constitution or general laws, and confers upon the legislature the authority to define the powers of counties which frame their own charters. This preserves independent of the local charter the sheriff, state's attorney, treasurer, surveyor, clerk of court, register of wills, and, of course, the judicial officers; but the sheriff (by a recent act of the legislature) has been deprived of many of his former administrative powers. The legislature in 1918 passed a law which confers upon counties which adopt their own charters a broad grant of legislative and administrative powers with respect to most affairs of local concern. The proposed charter for Baltimore county provides for: (1) a council of fifteen members chosen by districts, with nonpartisan nomination and election and with a term of three years, one-third of the members to retire each year; (2) a county manager chosen by the council for an indefinite term, with a salary of \$5000 which the council may raise to \$6500; (3) three administrative departments, the heads to be elected by the council upon nomination by the manager, for a term of four years; (4) removal of the manager or heads of departments at any time by two-thirds vote of the members of the council. The charter, if adopted, will introduce the first county-manager system in the country. It is opposed by the stronger local party organizations.<sup>1</sup>

The committee of fifteen, appointed in 1916 by action of twenty representative civic organizations of Cleveland to investigate and report upon the city-manager plan for Cleveland, presented majority and minority reports in November, 1919. The majority report, signed by ten members, recommends, in main essentials, the model charter of the National Municipal League providing for a city manager and a council elected by proportional representation. The council would

<sup>1</sup> Cf. H. W. Dodds, "A County Manager Charter in Maryland," in *National Municipal Review*, August, 1920, pp. 504-513.

consist of from fifteen to twenty members chosen from a few large districts from each of which would be elected, by a system of proportional representation, from five to nine councilmen; the city manager would be chosen by, and serve at the pleasure of, the council, and would have the power of appointing all department heads, except the law director and the city auditor. The minority report, signed by five members of the committee, preserves the independent mayor of the present charter, makes him ineligible to succeed himself, and confers upon him power to choose the city manager, who would serve during the mayor's pleasure; the manager would have direction of the several administrative departments, except the offices of city solicitor and auditor, who would be appointed directly by the mayor. The reports contain interesting arguments in support of their respective plans. Apparently no further progress has been made recently in the movement for a new charter for Cleveland.

Discussion of the borough system of organization has recently been taken up in Cleveland. For some years past intermittent efforts have been made in some manner to consolidate with the parent city the cities and villages contiguous to Cleveland. Agitation in the past has shown two separate trends: one, the simple annexation of these suburban communities, making of them new city wards, or portions of existing wards; the other, a plan of city-county consolidation contemplating rather sweeping changes and effecting a complete unification and centralization of government for all existing local units. Neither movement has gone much beyond the introduction of enabling legislation in the proper legislative bodies. With the coming into office on May 1, 1920, of the present mayor, Hon. W. S. FitzGerald (succeeding Mayor Davis, who resigned to enter the race for governor), has come the proposal of the borough idea as a solution of the problem. In the past the outlying corporations could not be interested in the proposition of coming into Cleveland under any plan that would cause them to lose their identity in the greater Cleveland. The borough plan has been tentatively advanced by the mayor as affording a way of preserving their local identity and yet making these communities a part of Cleveland so far as the general functions of government are concerned. The matter of the actual division of powers between the proposed borough governments and the general city government has not been discussed in detail as yet. The mayor has arranged conferences with the executives of the principal suburban corporations at which the views of each have been expressed. The fact that these

suburban executives are willing to confer is deemed hopeful by many friends of a greater Cleveland. The mayor is said not to favor the New York borough plan, deeming it too complicated. The suburbs on their part will oppose strenuously the surrender of any large body of powers to the central government. These apparently divergent positions will require skillful adjusting if the plan in any form is to be brought to fruition.<sup>2</sup>

A circuit court in Michigan has recently declared unconstitutional the provision of the charter of Kalamazoo establishing the Hare system of proportional representation in the election of city commissioners. The decision was rendered in a *quo warranto* suit brought by a man who had been an unsuccessful candidate for election under the system. The ground for the decision was the opinion of the judge that the section of the state constitution (III. 1) declaring that every person possessing the designated qualifications "shall be an elector and entitled to vote" implies that each such person is entitled to vote for every officer for which he is qualified to vote, whereas under the charter provision in question the ballot of any voter is counted for one candidate only, although seven candidates are to be elected; and another section of the constitution (VIII. 8) provides expressly that "no city or village shall have power to abridge the right of elective franchise."

The cities of Vancouver and Victoria, British Columbia, have adopted the Hare system of proportional representation for the election of their councils. Vancouver (with a population of about 100,000) is the largest city in America using this system. In January of this year the Hare system was used for the first time generally in Irish municipal elections.

Among larger cities which have recently adopted the city-manager form of government are the following: Lynchburg, Petersburg, Newport News, and Hampton, Virginia; Tallahassee, Florida; Dubuque, Iowa; Muskogee, Oklahoma; Watertown New York; Beaumont, Texas; Colorado Springs; Pontiac, Michigan. Under the new census figures, Akron, Ohio, where the city-manager form went into operation on January of this year, is now, with a population of 208,000, the largest city-manager city. The secretary of the city-managers' association reported in April of this year that the total number of cities having the city-manager system in some form was 180. Of this number, 115 have "standard commission-manager charters," the others having

<sup>2</sup> This paragraph was supplied by Mr. L. E. Carter, director of the Cleveland Bureau of Municipal Research.

introduced the office of manager without adopting the commission-manager system in all its typical features. Interesting data on these cities, relating to population, type of city-manager form, etc., is given by the secretary in the April and May issues of the *National Municipal Review*.

In Sacramento, which has operated under the commission form for eight years, a charter providing for the city-manager form is voted on at the election this month. If approved by the voters and ratified by the state legislature which meets in January it will go into effect on July 1, 1921.

Among the amendments submitted by the Nebraska constitutional convention which adjourned in March (and adopted in September) is one which simplifies the process whereby cities of 100,000 (including Omaha alone) may acquire a "home-rule" status as to scope of powers and future change of charter. The amendment makes it possible for Omaha to acquire that status by a simple vote on the question, without the necessity of resorting to the machinery for adopting a new charter.

In Minneapolis the electors are voting at the election this month upon the question of assuming home rule. A charter commission, appointed by the district court, has decided not to frame a new charter, but merely to bring together the charter enacted by the state legislature thirty years ago, with the later amending laws, rearrange these in systematic form, and submit the whole to the voters. The voters can thus, by approving this document, acquire the power to amend their charter in the future without depending upon legislative action.

The city of Detroit has recently established an important innovation in its judicial machinery. In place of the two former more or less independent courts—the police court, of three judges, having jurisdiction of misdemeanors, and the recorder's court, of two judges, having jurisdiction of felony and city ordinance cases—there now exists a single criminal court, to be known as the recorder's court, which possesses all kinds of criminal jurisdiction. This change is expected materially to reduce the delays and uncertainties inherent in the former system, which secured for professional criminals comfortable respites; this protection, under the old system, came, in felony cases, from the provision for preliminary hearing in the police court and trial in the recorder's court; in misdemeanor cases, from the provision for trial in the former court with right of appeal and new trial in the recorder's court. The bill was bitterly fought in the 1919 session of the state legislature, and the opponents secured some modifications of the original

bill, one of them requiring reference of the bill to the voters of Detroit. Following a keenly contested popular campaign, the act was approved at the election held April 5 of this year by a vote of 106,132 to 30,617. It is expected that with the unified criminal court there will be to some extent a functional division of jurisdiction whereby the different judges will specialize in certain classes of cases, such as domestic relations or traffic cases. A psychopathic clinic is to be conducted in connection with the court. The Citizens' League of Detroit, which has taken the lead in other recent civic movements in the city, was the chief factor in securing the success of the movement for this court. In devising its plan for the unified court it obtained the assistance of the American Judicature Society.

**Street-railway Problems.** One of the most perplexing problems now confronting city authorities in all parts of the country is that created by the condition of the street-railway industry. In the numerous conflicts in connection with urban transportation troubles all sides usually agree that the electric railway industry is not at present performing the public function assigned to it. The difficulties are well known: many systems, in large urban centers, in the hands of receivers, others on the verge of insolvency; shrinkage in the values of street-railway securities, and impairment of credit; labor troubles; neglect of needed extensions; inadequate service. These conditions have been evolving during several years, have developed numerous critical issues among owners, employees, city authorities, and city electorates, and have given occasion to various investigations, plans and reports. Some of the more typical or significant recent developments in connection with transit problems in various localities are noted in the following paragraphs.

Unusually interesting features are presented by the recent course of events in Toledo, Ohio. During the past decade the city and the Toledo Railways and Light Company have been engaged in frequent disputes in connection with negotiations as to fares and renewal of franchise grants. The company has been operating without a franchise since the final expiration of its franchises in March, 1914. The development of events since that date has been marked by many bitter issues and some freakish turns. For a period in 1914 some passengers paid the five-cent fare demanded by the company, while others, by offering the three cents ordered by city ordinance, rode free because of the refusal of conductors, obeying orders of the company, to accept the

latter amount. Following decisions by the United States district court that the three-cent fare ordinance was confiscatory and that as long as the company had no franchise the city lacked authority to fix fares, the company was able to collect fares fixed by itself. After the company had raised fares several times the city decided to deny to the company the use of its streets. An ouster ordinance was passed in 1919 to go into effect July 31. The ordinance was prevented from going into effect on that date by a referendum petition requiring submission of the ordinance to popular vote at the November, 1919, election. At that election the ordinance was sustained by the narrow majority of slightly over 800 in a total vote of about 40,000. A few days later, before any action had been taken or threatened by city officials to enforce the ordinance (in fact, according to the statement of city officials, following their assurance to the company that no immediate steps would be taken), the company startled the administration and the public by withdrawing its cars from the city and the state during the night, explaining that they regarded the ouster ordinance as self-enforcing. Then, following a statement from the court that it could not order the company to restore its cars until the council should take some action to permit the use of the streets by the company, the council, early in December, amended the ouster ordinance by postponing its operation until April 1, 1920, provided that the company should immediately resume operation at the rate of fare in effect at the time of the withdrawal. Thereupon the company, upon order of the court, resumed service under those conditions. Next, the council, at the suggestion of the court, authorized the court to appoint a commission to consider the whole situation and work upon drafts of alternative ordinances for submission to popular vote, one to provide for municipal ownership and operation and one for a new franchise based upon the service-at-cost principle; the commission to be divided equally in composition between those favoring the two respective policies. The latter branch of the commission, after several months work in frequent conference with the president of the company, failed to produce any ordinance, because of inability to reach any agreement with the company upon the issue of valuation, and upon some other points.

The municipal ownership branch of the commission, in order to determine the powers of the city, instituted a suit in the state courts to test the authority of a city to issue bonds for the purchase of a street-railway or other transportation system, the issue being whether, under the provision of the constitutional "home-rule amendment"

(which authorizes cities to "acquire, construct, own, lease and operate within or without its corporate limits, any public utility the product of which is or is to be supplied to the municipality or its inhabitants") a city, under a provision of its own charter empowering its governing body to issue bonds upon its general credit for the purpose of acquiring a street-railway or other public utility, may issue bonds for such purpose in the absence of specific authority from the legislature; in other words, the issue was, whether the provision of the constitution which reserves to the legislature the authority to limit the city's power to levy taxes and incur debts, makes invalid any step by a city to issue bonds for a purpose not specifically authorized by law. In March the state supreme court in a unanimous opinion decided in favor of the city, holding that the legislature has control only over the total amount of indebtedness which a city may incur and has no control over the purposes for which bonds may be issued. "Municipalities of the State are empowered by constitutional provisions to acquire any public utility the product or service of which is to be supplied to the municipality, and they may issue bonds to raise money for such purpose, pledging the general credit of the municipality to their payment within the limitations prescribed by the legislature as to amount of indebtedness for local purposes. No legislative grant of power is essential." A significant point in the decision is that which authorizes a city having a home rule charter to issue general credit bonds.

In May this same branch of the commission made an extensive report to the council, stating its reasons for recommending municipal ownership of the transportation system of the city, and submitted an ordinance providing for a bond issue for the purpose. The council finally submitted two bond issues: one provided for an issue of \$3,000,000 for acquiring a transportation system: the plan being to have the city purchase the more desirable parts of the company's system; the other provided for an issue of \$4,000,000 for constructing a transportation system, the object being to enable the city to construct new lines, purchase new rolling stock, and establish a motor bus system. The two ordinances were submitted at the primaries, August 10, and both were defeated, the former by vote of 8534 for to 12,468 against, the latter, 7901 for and 11,543, against; this result thus affording another instance of the practice under which voters will at one election approve the policy of municipal ownership and at a subsequent election disapprove the financial provision for carrying the policy into effect.<sup>3</sup>

<sup>3</sup> See *Toledo City Journal*, August 14, 1920, p. 363.



The company likewise had meanwhile experienced a characteristic change of heart. Spurred probably by the menace of public ownership, it had modified its former position on the valuation issue and agreed to accept the service-at-cost franchise on the basis of an \$8,000,000 valuation, substantially as drawn by the private ownership branch of the commission. The council has voted to submit at the election this month both the service-at-cost franchise and again the two bond issues rejected in August. The former provides for a twenty-five year franchise, with enlarged city control over services.<sup>4</sup>

In Detroit the street-railway situation is especially marked by the extreme inadequacy of its transportation system, which has been standing still for several years while the city has been increasing in population with exceptional rapidity. On two occasions the voters of the city have recorded their approval of municipal ownership of the street railways by ratifying the present charter provision directing the city to "at once proceed to, and as soon as practicable acquire or construct and own, maintain and operate a street railway system" which as soon as practicable "shall be made exclusive." And twice plans for the purchase of the system have been defeated at the polls. Finally, at an election held April 5 of this year a plan of municipal ownership prepared by Mayor Couzens was adopted. The plan calls for a bond issue of \$15,000,000 to be used for the construction and operation of new lines. Work in executing this plan has been retarded through injunction suits filed by the Detroit United Railway; but, the first spike in the municipal street railway was driven by Mayor Couzens on August 23. The mayor in turn has, through the police, impeded the efforts of the company to proceed with extension of its lines on certain streets.

Seattle occupies the unique position among large cities of the United States in being the only one which owns and operates practically the entire street-railway system of the city. After several years of contention between the company and a hostile city government, the company, despairing of receiving satisfactory treatment from the city during the remaining years of its franchises (which would not have expired until 1934), agreed, late in 1918, to sell out to the city, under terms now considered to have been very favorable to the company. The city paid \$15,000,000 in utility bonds, which are payable, in instalments for twenty years, out of, and are a first lien upon, the earnings of the utility. The first three months of municipal operation, which began

<sup>4</sup> The three ordinances are printed in full in the *Toledo City Journal*, August 28.

on April 1, 1919, showed substantial profits with some extension of services. The succeeding months have shown steadily mounting deficits, with expanding expenditures due to wage increases and rising prices of materials and supplies. The mayor has instituted an investigation of the facts incident to the purchase of the system, in order to discover evidence, if any, to support charges that misrepresentation and other improper means had influenced the transactions. There have been several recent fare increases under municipal ownership, the latest embodied in an ordinance passed in June of this year providing for a ten-cent cash fare or four tickets for a quarter; the mayor considers this to be inadequate. This experience of Seattle is being watched with considerable interest by students of municipal government, because of what it may indicate as to the expediency of municipal operation of street railways in this country; although it is generally conceded that the Seattle experiment has probably been undertaken under unfavorable circumstances.

In St. Louis and Pittsburg, in both of which cities the street railways are now in the hands of receivers, agitation of the question of municipal ownership has been stimulated by the conspicuously inadequate and unsatisfactory services being rendered by the companies in these localities, and by disclosures as to excessive over-capitalization and bad financing by the companies. The Civic League of St. Louis has initiated a campaign for municipal ownership of the street railways of that city. In Pittsburg the situation has been somewhat complicated by the recent decision of the public service commission, which, in fixing the valuation of the street-railway properties, used, as a basis, unit costs for the years 1914 to 1918—years of exceptionally high costs. The resulting valuation is at such a high figure that advocacy of municipal ownership on that basis would be considerably handicapped in a popular campaign. On the other hand, there are indications that the private interests concerned would not be adverse to a sale to the city on the basis of the valuation fixed by the commission. Efforts to secure legislation by the Pennsylvania legislature of last year to enlarge the powers of Pittsburg by giving it powers to acquire street-railway facilities by condemnation (a power possessed by Philadelphia) met with failure.

A report by the National Municipal League's committee on public utilities, entitled "A Correct Policy Toward the Street Railway Problem," has been issued as a supplement to the *National Municipal Review* for April, 1920. It is a revision and enlargement of the original

draft presented at the annual meeting of the league in Cleveland, December, 1919. Dr. Delos F. Wilcox is chairman of the committee. This report contains summaries of all previous reports of the league on the subjects of public utilities, franchises and municipal ownership. The present report analyzes the problems involved in what it considers to be the menace of the present situation, characterized by speculation, interruption and curtailment of services, with increased fares affording only temporary and partial relief, and conflict between state and local regulation—in short a break-down of private management, on the one hand, and, on the other hand, an absence of definite and constructive policies on the part of the public authorities. The report squarely recommends the policy of public ownership and operation of street-railway transportation. It also indicates the problems that need to be taken up at once, relative to the formulation of definite policies and the preparation of definite plans for the consummation of municipal or state ownership.

The federal electric railways commission, appointed by President Wilson in May, 1919, to investigate conditions of the electric railway industry, submitted its report on July 28 of this year. The commission was composed of eight members representing the following, respectively: members of public utility commissions, electric railway owners, street-railway employees, investment bankers, mayors, and the United States departments of commerce, labor, and the treasury. Its investigation covered questions of franchises, rates, taxation, management, public relations and regulation, labor conditions,—all in relation to actual conditions, causes of conditions, and necessary readjustments. The commission being broadly representative, the present report,<sup>5</sup> comprising discussion and recommendations and signed by all the members, appears to be carefully balanced and constructive, although, in the words of the report itself, it “necessarily represents decided concessions by some of its individual members.” On the issue of public or private ownership the report recommends the continuance, “for an extended period,” of private ownership and operation (under proper regulation and with further trial of the cost-of-service plan), with public ownership as an ultimate alternative policy and also as a legally possible present alternative so as to safeguard public interests under private ownership. Its “conclusions and recommendations” on this subject are, in part, as follows: “Cost-of-service contracts are in the experimental stage,

<sup>5</sup> The report is published in full in the *Electric Railway Journal* for August 28, pp. 398-411.

but, where tried, they seem to have secured a fair return upon capital, established credit, and effected reasonably satisfactory public service. Such contracts may safely be entered into where the public right eventually to acquire the property is safeguarded." "The right of the public to own and operate public utilities should be recognized, and legal obstacles in the way of its exercise should be removed." "While eventually it might become expedient for the public to own and operate electric railways, there is nothing in the experience thus far obtained which will justify the assertion that it will result in better or cheaper service than privately operated utilities could afford if properly regulated." A complete report of the testimony taken by the commission is to be printed and distributed to leading libraries, all regulating commissions, and mayors of leading cities. The great majority of witnesses who appeared before the commission as representatives of the electric railway companies favored the cost-of-service franchise.

At the conclusion of the commission's hearings it engaged Dr. Delos F. Wilcox to digest and analyze the testimony taken by the commission and make suggestions with reference to its report. Dr. Wilcox made a comprehensive analysis of the testimony and recommended public ownership as the proper policy indicated by the testimony. The commission has not published Dr. Wilcox's report; but it has announced that a summary, prepared by him, is to be printed with the report of the testimony. Dr. Wilcox has recently distributed to the press a lengthy statement criticising some aspects of the commission's report, analyzing the results of recent fare increases upon traffic and revenues, and arguing for public ownership and operation as the only adequate solution of the street-railway problem.

Several developments have occurred in Cleveland during the past year under the famous Tayler service-at-cost franchise. In December, 1919, following increased revenues during the preceding three months, a reduction in street car fares from 11 tickets for 50 cents to 6 tickets for 25 cents was announced. In January of this year, the city council amended the original franchise so as to permit a seven instead of six per cent return on the capital stock. Late in August the president of the railway company announced that, because of recent decrease in net revenues, fares will be automatically increased to the maximum provided in the franchise—6 cents fare, or 9 tickets for 50 cents, with charge of one cent for transfers. A proposed bond issue of \$15,000,000, urged by the Cleveland rapid transit commission, to enable the city to build a subway traction terminal under the public square, with

feeders from four directions, was defeated by a two to one vote at an election in April.

A proposed cost-of-service franchise for the Minneapolis State Railway Company, whose present fifty year exclusive franchise will expire on July 1, 1923, was defeated by over 7,000 votes in the election in November, 1919. The chief grounds of objection were the alleged excessive valuation provided in the proposed franchise and the alleged excessive return provided, seven per cent. There is some local fear that, in view of the present unsatisfactory service and the repeated failures of the city and company to come to terms, the legislature of 1921 may establish state regulation of transportation in Minneapolis.

A valuable report on service-at-cost franchises has recently been issued as a legislative document by the state of New York, under the title—"Service-at-cost franchises in effect in America. An identical analysis of plans in effect in Cleveland, Montreal, Boston, Dallas, Cincinnati, Youngstown, and on the Eastern Massachusetts Street Railway Company and the Westerville Division of the Columbus [O.] Railway, Power and Light Company, and the General Massachusetts Service-at-cost Law."<sup>6</sup> A useful report on the operation of the service-at-cost franchise in Cincinnati was issued in August by the director of street railways of that city. Rochester, New York is one of the latest cities to adopt this form of franchise. It recently entered into such an arrangement with the company which operates the street railways of that city. The agreement is to extend for a period of two years subject to renewal if desired by the city. The agreement concedes to the city extensive control over services, extensions, and betterments, this control to be exercised by a commissioner of railways appointed by the mayor at a salary of \$12,000 to be paid from the revenues of the street railways. Under this franchise an advance to a 7 cent fare, with 6 tickets for 26 cents, was put into effect on August 28. In Akron, Ohio, negotiations looking to a service-at-cost franchise are under way between the city authorities and the street-railway company.

Two important reports on the transit situation in New York City have been issued during the past year. A report prepared by Dr. Wilcox and signed by thirty-three other men interested in municipal affairs in New York City, bears the title "Transit Problems of New York City: an analysis of the difficulties in the way of the continuation of the policy of private ownership and operation, and of the obstacles to be removed in preparation for successful public ownership and

<sup>6</sup> Legislative Document No. 96, 1920. 157 pp.

operation." The title reveals the policy recommended in the report; but the difficulties—legal, financial, and political—involved in that solution are carefully canvassed. "The Traction Crisis in New York" is the title of a report written by Dr. Charles A. Beard. This report analyzes the difficulties of the present situation, considers the various ways of relief, and proposes a "settlement promising permanent relief." The proposed settlement would continue private ownership and operation, but under a reorganization which would secure: (1) unified operation and regulation, (2) a tentative franchise, with capitalization limited to *bona fide* expenditures to create property, (3) assurance of a fair return on honest capital, (4) division of profits, above a reasonable return, between company and city, (5) preparation of the way to municipal ownership on definite terms when desired by the city.

The *National Municipal Review* has during the past year continued its articles dealing with recent street-railway developments, under the title of "The Fate of the Five-cent Fare." Recent articles describe street-railway history in San Francisco, Toronto, Detroit, Indianapolis, Minneapolis, Pittsburgh, and Seattle.

The city commission of Nashville, Tennessee, has recently passed an ordinance prohibiting the operation of one-man street cars in that city. The demand for such an ordinance came chiefly from the labor unions.

In June of this year the Cleveland city council adopted an ordinance providing strict regulation of motor bus transportation. The ordinance requires: (1) a liability insurance policy to be taken out by a company or person operating motor busses—a policy of \$60,000 for operating one or two busses, and \$30,000 additional (with \$1,000 more of property liability) for each additional bus; (2) license fees from both owners and drivers; and (3) that fixed routes be named before issue of an owner's license.

**Housing and Rent Problems.** The widely prevailing housing shortage and rental difficulties in cities have produced a variety of activities, by public and private agencies, in the way of investigation, relief, and control. Various studies have been made to discover facts and remedies as to rent profiteering and means for bringing about a resumption of normal building. The municipal reference library of New York City has recently published a useful bibliography on "Rent Profiteering," by Miss R. B. Rankin. Organizations have been formed in several cities to provide assistance for families of limited means,

to enable them to buy or rent homes under terms less burdensome than those now generally prevailing. An example of this sort is the Bridgeport (Conn.) Housing Company, organized by merchants, manufacturers, and bankers, with a capital of a million dollars, limiting its earnings to six per cent. It has built group houses, providing homes for sale at from \$3350 to \$5400—payable ten per cent down and one per cent a month thereafter, or for rent at from \$18.50 to \$46 a month.

Significant experiments have been made in the way of state and municipal governmental activity to meet the critical situation produced by constant rent increases and the ejection of tenants. Effective work in assisting in the solution of the rent problem has been done by the rent and housing committee of Boston, appointed by Mayor Peters and organized in March of this year, to adjust differences between landlords and tenants and study housing needs generally. In carrying out the former purpose this commission has already achieved results in over a thousand cases, through securing compromises, persuading owners and tenants to adjust their own differences, obtaining extensions on vacate notices, referring some cases to boards of health, fire department, or police department, finding vacant houses, and in other ways.

The legislature of Massachusetts recently passed an act authorizing any city to appropriate money for the erection of homes to be sold to families in need of homes. The city of Boston has taken steps to resort to that means of solving the problem, attempts in that city to create a private housing corporation having failed.

Several cities have adopted the policy of increasing assessments on real estate properties in cases where landlords make extortionate rent increases. This plan was recently followed in Detroit where members of the city council act also as members of the board of tax review.

In July, 1919 the legislature of Wisconsin amended its general corporation law in such way as to enable individuals to organize coöperative housing companies and to authorize city councils and county supervisors to subscribe preferred stock in such corporations and, in this way, engage in housing activities. The law places a limit of \$5000 upon the cost of any single dwelling built by such a company; prohibits sale of land except in case of winding up the affairs of the corporation or of closing mortgages or liens or of disposing of land not needed; prohibits lease of property except to, and for the use of, a stockholder (with certain exceptions as to ex-soldiers); limits the stock of any tenant to the value of the premises occupied by him; limits dividends to five per cent; and provides for the prompt retirement of pre-

ferred stock. The act is based on the recommendations of the Milwaukee housing commission.

As many cities have been looking to the so-called "Ball rent law"<sup>7</sup> (passed by Congress in October, 1919, for the District of Columbia) as a model for ordinances to check rent profiteering, the decision of the court of appeals of the District of Columbia in June of this year, declaring that law to be unconstitutional, is of considerable interest. The act, declaring that, for the purposes of this act, all rental property is affected with a public interest, created a rent commission of the District of Columbia, composed of three members holding office for the life of the commission, which was fixed at two years by the law. Under the act this commission is empowered: (1) to deal with controversies over rents,—to fix fair and reasonable rents and grant permission, and determine rental, for sub-leases; and (2) to deal with possession cases, with power to prescribe standard forms of leases and, under certain conditions, extend tenancies beyond the expiration of leases. The act forbids eviction of a tenant except upon one of three grounds: (1) failure of tenant to pay rent or to perform other valid conditions of the lease or contract; (2) desire of the landlord to repair or tear down the property in order immediately to construct new rental property approved by the commission; (3) desire of landlord to secure the property for *bona fide* occupancy by himself, his family or dependents. The commission has handled a large number of cases, has compelled reduction of rents in many cases, adjusted many controversies without formal hearings, and decided many possession cases.

The case in which the Ball act was declared unconstitutional arose through the suit of a purchaser of a property to secure possession from the tenant whose lease had expired. The court of appeals, to which the plaintiff appealed after the trial court had given judgment for the defendant, held the act to be invalid on the ground that it denies the right of trial by jury in property disputes, impairs the obligation of contracts, and is not a proper use of the police power of Congress. It held that the renting of property in the District of Columbia is a private business which can not be impressed with a public interest merely by legislative fiat or by an arbitrary exercise of the police power. Chief Justice Smyth in a dissenting opinion held that the business of renting property in the district, because of the extraordinary circumstances created by the war, resulting in rental

<sup>7</sup> This forms part of the Food Control and District of Columbia Rents Act, 66th Cong. 1st Sess. ch. 80. Approved October 22, 1919.



conditions dangerous to public health and embarrassing to public business, is affected with a public interest. The commission appealed to the United States Supreme Court, which, on technical grounds, declined a writ of error. However, the commission has been able to continue to function, because of a provision of the law which, in effect, empowers it to continue its work pending a final decision by the Supreme Court. Meanwhile the acts of the commission are still subject to review by the courts, and a decision may soon be rendered which can form the basis of an appeal to the highest court.

The rent laws enacted by the New York legislature in the spring of 1920 have attracted widespread attention. The legislature, following a special message of Governor Smith, passed eleven laws, which went into effect April 1. These laws apply to first-class cities and to Westchester county. The more significant provisions of these measures are as follows: where summary eviction is sought on the ground that a tenant is objectionable, burden of proof is shifted from the tenant to the landlord; where the duration of a lease is not specified in the agreement it shall extend until October 1 following occupancy; where a landlord has increased the rent by more than twenty-five per cent over the rent of the previous year, the tenant may set up as a defense, in an action for payment of rent, that the new rent is unreasonable and oppressive, the court then determining what in the particular case is a reasonable rent for the landlord; where a tenant can prove to the satisfaction of the court that he has sought to secure suitable premises and has failed through no fault of his own, the court may in its discretion grant a stay of not more than twelve months; where there is a monthly leasing agreement, thirty days notice to vacate, instead of twenty, is required; willful failure of a landlord to provide "natural and normal service," such as water, light, heat, elevator operation, is made a misdemeanor punishable by a fine of \$1000 or one year's imprisonment or both; the law empowering a lessee or owner to recover double penalty where a tenant holds over without the former's consent, is repealed.

Experience under the New York laws has not been long enough to give basis for conclusions as to the wisdom of the measures. Hardly any one seems to consider them at all adequate to meet the chief difficulties of the situation. Although they have apparently mitigated some phases of the evils of rent profiteering, they have, in the opinion of some, tended to postpone fulfillment of the chief need, namely, active resumption of building dwelling houses on a large scale. Opponents

of the laws argue that because they permit rentals of dwellings to be fixed otherwise than according to the law of supply and demand, they discourage investment in apartment houses and other residences.

A special session of the legislature convened in September upon the call of the governor, to deal further with the critical housing situation. At this session were enacted several measures recommended by the joint legislative committee on housing, the most important being: (1) giving local authorities power to exempt from local taxation new buildings to be used exclusively for dwellings, the exemption to apply to construction completed since April 1, 1920, or commenced before April 1, 1922, and completed within two years, and to continue not longer than until January 1, 1923; (2) striking out the 25 per cent increase in rent permissible under the laws passed at the regular session, and permitting a tenant, sued for non-payment of rent, in all cases to set up as a defense that the rent demanded is unreasonable, whereupon the burden is to be upon the landlord to prove by authenticated statements of income and cost of maintenance that the rent demand is not unreasonable; (3) forbidding eviction of a tenant by a landlord except upon one of the three grounds indicated above in the description of the "Ball rent law"; (4) permitting the state and municipalities to invest sinking funds in state land bank bonds.

A movement has been started in Atlanta, Georgia, to obtain from the legislature an amendment to the city charter authorizing the creation of a municipal rent commission with power to fix equitable rents. The city council of Toronto has decided upon the appointment of a housing commission and upon the construction of 500 dwellings for sale or rent; the houses will be sold to laborers, to whom loans up to fifty per cent of the cost will be made.

The legislature of North Dakota in 1919 enacted a law providing direct state aid for home builders in both urban and rural sections. Under the law the North Dakota Home Builders' Association has been established; \$100,000 has been appropriated to the association; and another law provides for the issue of bonds to cover first mortgages on real estate. The association is operated by the state industrial commission, which is authorized to acquire by lease or by exercise of the right of eminent domain all necessary property rights, and to construct and remodel buildings for the purpose of selling them to private owners. The commission fixes the rates on both deposits and loans, the rate not to exceed six per cent per annum.

**Organizations and Publications.** Several changes have been made recently affecting the National Municipal League and the *National Municipal Review*. Dr. Harold W. Dodds, formerly of Western Reserve University, has been made secretary of the league, succeeding Clinton Rogers Woodruff, who resigned in December, 1919, after twenty-five years service in that office. Mr. Dodds is now also one of the editors of the *Review*. The official headquarters of the league and the *Review* have been moved from Philadelphia to 261 Broadway, New York City. Dr. A. R. Hatton has been made field secretary of the league. R. M. Goodrich, legal member of the staff of the Detroit Bureau of Governmental Research, has been made editor of the "judicial decisions" department of the *Review*. The *Short Ballot Bulletin*, which for about ten years had been published bimonthly by the National Short Ballot Organization, ceased publication with the April issue, and was consolidated with the *National Municipal Review* in the May issue of the latter. Beginning with the February issue, the *Review* has contained a special section devoted to the "City Manager Movement," edited by Harrison Gray Otis, secretary of the City Managers' Association, and presenting information as to the progress of the movement and the experiences of cities operating under that system. The annual meeting of the National Municipal League will be held in Indianapolis, November 17-19; discussion of the league's model state constitution will form part of the program.

The eleventh annual meeting of the New York State Conference of Mayors and other city officials was held in Jamestown in July.

In February a bureau of municipal research was established in Cleveland, under the auspices of the Welfare Federation of Cleveland, the board of trustees of which selects the controlling committee of the bureau. Mr. Leyton E. Carter, formerly assistant-secretary of the Civic League of Cleveland, is director of the bureau. Mr. G. A. Gessell has been made secretary of the Civic League, succeeding Mr. C. A. Dykstra, who in May resigned that post to become executive secretary of the Chicago City Club.

The special joint committee on taxation and retrenchment, of the New York legislature, has recently made a report embodying the results of its investigation into the problem of the cost of city government.<sup>8</sup> It gives eight causes for the increased cost and makes eleven recommendations for retrenchment. Besides recommendations on such sub-

<sup>8</sup> *Taxation and Retrenchment: Report of the Special Joint Committee*. State of New York, Legislative Document No. 80, 1920, 155 pp.

jects as those of budgets, pensions, purchasing, taxation and assessment, and educational administration, it makes definite recommendations with respect to the general structure of municipal government, advocating the centralization of all executive functions under a single executive officer directly responsible to the electors, and the conceding of a wide latitude to local authorities in prescribing internal departmental organization.

A municipal reference library has recently been established by the Toledo commission of publicity and efficiency, which is an agency of the city government. The librarian of the city library has made the office of the commission a branch library for books on municipal government and related subjects; in addition the commission collects pamphlet materials, reports and magazines relating to municipal matters. The *Toledo City Journal*, a weekly periodical which has been published by the commission for about five years, is one of the most useful among municipal journals. A bureau of municipal efficiency and economy has recently been established in Sacramento, Calif. This commission is composed of thirty unsalaried members appointed and removable at pleasure by the city commission. Its duties are "to investigate both the social and economic conditions and the efficiency and best management of the city, with a view to promote the economy and efficiency of its administration." The *Alameda Municipal Journal* is one of the newest municipal publications. It is to be published monthly and distributed free to every home in the city. Its declared object is to keep each resident "posted, in readable form . . . on the work and progress of the various departments functioning under the city government."

*Public Business*—the bimonthly publication of the Detroit Bureau of Governmental Research—contains in its issue for July 15, 1920, a useful "partial list of citizen and semi-official organizations" devoted, in part, to investigation and reporting upon problems of governmental—municipal, primarily—organization and administration.

**Miscellaneous Items.** In April of the year Mayor Hoan, the wellknown Socialist mayor of Milwaukee, was reelected. At the same election 14 Socialists and 17 nonpartisans were elected to the council.

An interesting recall election was recently held in Charlotte, North Carolina, and brought out the largest number of voters that had ever taken part in a municipal election in that city. The movement for the recall was in first instance instigated by an anti-administration

element who took advantage of the dissatisfaction of two limited groups of the population—one charging the mayor and commissioners with having neglected to display proper vigor in preserving order during strikes at the cotton mills, the other disgruntled because of the adoption by the administration of a plan for stricter sanitary regulation of milk distribution within the city. Later the troubles in connection with a strike of street-railway employees gave the recall movement a different turn. The action of the administration in this strike aroused the opposition of organized labor, which now took the lead in furthering the recall movement. This latter circumstance turned the issue into one of law and order, with the result that the mayor and commissioners were retained in office by large majorities.

The new council of Philadelphia, acting under powers conferred by the new charter, appointed early in this year a new civil service commission. The members appointed are Clinton Rogers Woodruff, chairman; Lewis H. Van Dusen, who had served as civil service commissioner during the administration of Mayor Blankenburg; and Charles W. Neeld, a business man. The commission has been engaged in the work of devising a plan of classification and salary standardization. It has employed an expert staff to assist in this work.

The city service commission of Milwaukee is conducting a salary survey, under the direction of the secretary of the commission and the director of the citizens' bureau of municipal efficiency. Efforts will be made to make the new salary schedule, to be proposed, conform essentially to the Jacobs salary standardization plan of 1918. The pension committee for Milwaukee, appointed in 1919 under authority of an act of the legislature, is formulating its plan for the pensioning of all employees of the city, and expects to present its complete report to the city council in December. If approved by the council, it will be submitted to the state legislature for enactment into law. Under the tentative scheme now under consideration by the commission, with frequent consultation with advisory committees of city employees, there will be no common pension fund, but an individual fund for each employee, made up in each case from assessments upon the employee supplemented by contributions from the city treasury; and there will be provision for pensions for widows and children and disability payments.

Columbus, Ohio, Jersey City, New Jersey, and Somerville, Massachusetts are cities which have recently adopted the two-platoon system in their fire departments.

St. Louis and Baltimore furnish two interesting instances in the extension of municipal activity in the dramatic and musical field. The city government of St. Louis, with the coöperation of numerous business and civic organizations, provided a season of open-air opera last summer. The city constructed an attractive stage and seating system in a natural amphitheatre in one of the city parks, and well known light operas of the better sort were given. The city of Baltimore has recently established a municipal community theatre on its municipal recreation pier. It is to be financed by the city government, and folk plays and American plays for children and adults are to be given at popular prices.

Milwaukee has definitely adopted the policy of a civic center for the grouping of public buildings. An ordinance embodying the project, promoted by the City Club and various other civic and labor organizations, was submitted by initiative petition at the April election and was adopted by a three to one vote. It is not at present intended to abandon any existing public buildings, but only to locate new buildings, county and city, as they are needed, upon the area selected for the center. The board of public land commissioners, which is at work upon a general city plan, is now planning a survey of the area to determine locations for the various buildings. Condemnation eventually of about eleven city blocks is involved in the plan for the civic center.

The city council of Toledo has recently enacted a drastic billboard ordinance which, following closely the Chicago ordinance (sustained by decisions of the Illinois supreme court and the United States Supreme Court in 1917), prohibits the erection of billboards in residence districts without the consent of the owners of a majority of property fronting on the street; the ordinance contains general regulations as to safety of construction and requires that a permit be secured from the commissioner of inspection for the erection of each billboard.

An important instance in the extension of municipal ownership is the recent acquisition by the city of Omaha, Nebraska, of the gas plant in that city. The proposal to purchase the plant (having been defeated in 1907) was adopted by popular vote in May, 1918. The condemnation court made its report in February of this year, fixing the price to be paid to the gas company at \$4,500,000; and the city commissioners have subsequently taken over the plant at that figure. The plant is operated by a bi-partisan board of directors, who also operate the municipal water plant. Omaha is the largest of the one hundred or more cities in the United States now operating gas plants.

## NEWS AND NOTES

### PERSONAL AND MISCELLANEOUS

EDITED BY FREDERIC A. OGG

*University of Wisconsin*

The editor of this department of the REVIEW will be glad to receive items suitable for publication from any member of the American Political Science Association, or from other readers. Such matter should be sent in before the middle of the second month preceding publication.

The headquarters of the American Political Science Association during its coming meeting at Washington, December 28-30, will be at the New Willard Hotel. The headquarters of the American Historical Association will be at the same hotel. The program of the Political Science Association's sessions will be distributed to members early in December. The chairman of the committee on local arrangements is Dr. Leo S. Rowe, of the Pan American Union.

Mr. Alpheus H. Snow, of Washington, D. C., died on August 1 in a New York hospital. Mr. Snow was an active member of the executive council of the American Political Science Association from 1915 to 1918. He was at the time of his death a member of the executive board of the American Society of International Law and of the American Bar Association. His principal interest was international law and politics.

Professor C. D. Allin, after some months of travel and study in Europe, has resumed his work at the University of Minnesota.

Mr. W. B. Ryland, of Middlebury College, has been appointed professor of political science at Hamline University.

Mr. John M. Gaus, who recently completed his work for the doctor's degree at Harvard University, has been appointed instructor in political

science at Amherst College. Mr. Gaus has been a fellow at the South End House in Boston, and has served with the War Labor Policies Board and with the New York State Reconstruction Commission. During the past year he was a tutor in government at Harvard. At Amherst he has charge of the courses in state and local government.

Mr. William E. Butt, assistant professor of history and political science in the University of Kentucky, has accepted a position in the reorganized department of political science at Pennsylvania State College. His place at Kentucky has been filled by the appointment of Mr. J. C. Jones, of the graduate school of Columbia University.

Mr. Frank M. Russell, of the University of Washington, has been appointed acting assistant professor of political science at Stanford University.

Professor Amos S. Hershey, after a two-year leave of absence, has resumed his work in the department of political science at Indiana University. Professor Hershey served as a technical adviser to the American peace commission at Paris.

Dr. A. J. Lobb, assistant professor of political science at the University of Minnesota, has discontinued teaching and has been made comptroller of the university.

The following men have been appointed instructors in political science at the University of Pennsylvania: C. V. Wolfe, formerly principal of the Urbana High School, Urbana, Ohio; W. L. Godshall, transferred from the department of anthropology at Pennsylvania; L. W. Lancaster, formerly of the department of history at Pennsylvania; M. L. Faust, recently connected with the Gettysburg Academy; A. F. Saunders, recently an assistant in political science at Wisconsin; and R. B. Watson, a recent student at Pennsylvania.

Mr. R. C. Journey has resigned his assistant professorship of political science at the University of Missouri to accept a professorship of political science and economics at Cornell College, Mt. Vernon, Iowa.

Mr. Robert L. Howard has been appointed instructor in political science at the University of Missouri.



Mr. Thomas L. Barclay, formerly instructor in political science at the University of Missouri, is pursuing graduate studies at Columbia University.

Mr. Frederic H. Guild, who has been the statistician in the Indiana legislative reference bureau since September, 1919, has resigned to accept an instructorship in political science at Indiana University.

Mr. Otto Kirchner, president of the Detroit Bureau of Governmental Research, and former president of the Governmental Research Conference, died at his home in Detroit, July 21.

Mr. G. A. Gissell, a graduate of the University of Wisconsin, and recently engaged in civic work in the Northwest, has been appointed secretary of the Cleveland Civic League succeeding Mr. C. A. Dykstra.

The department of history and political science at the University of Kansas has been divided into two departments. Professor Blaine F. Moore has been appointed chairman of the department of political science. Mr. A. A. Long, secretary of the Kansas League of Municipalities, is giving courses in municipal government in the department this year.

Dr. E. M. Sait, formerly assistant professor of politics at Columbia University, has been appointed professor of political science at the University of California. Professor Sait was lecturer in political science at California during the spring semester.

Dr. Edward Elliott, professor of international law and politics at the University of California, has returned to that institution after a two-year leave of absence. During this period he has done special work for the federal reserve bank of San Francisco.

Dr. J. R. Douglas, of the University of California, has been promoted from instructor to assistant professor of American government and administration. As director of the bureau of public administration, he has been conducting a survey of the state administration of California to determine to what extent scientific research is employed by the various agencies. This study is being made on behalf of the National Research Council of Washington, D. C.

Dr. Leonard P. Fox, assistant professor of political science at Carnegie Institute of Technology, Pittsburgh, has been appointed director of the research bureau of the Pennsylvania State Chamber of Commerce, with headquarters at Harrisburg.

The following members of the American Political Science Association were appointed to represent the association on the New York City committee which aided the Sulgrave Institution in carrying out the Tercentenary Pilgrim Celebration, September 27-30: C. A. Beard, J. P. Chamberlain, R. S. Childs, H. W. Dodds, Mayo Fesler, M. E. Loomis, T. R. Powell, Albert Shaw, Munroe Smith, and C. C. Williamson.

Dr. Walter F. Dodd, formerly secretary-treasurer of the American Political Science Association, has opened an office in Chicago for the general practice of law.

A School for Social Service Administration has been established at the University of Chicago under the direction of Professor L. C. Marshall. In consequence, the Chicago School of Civics and Philanthropy, incorporated in 1908 by Graham Taylor, went out of existence at the close of the summer term.

The Bureau of Municipal Research at Akron, Ohio, has undertaken a complete survey of county government with a view especially to obtaining data for use in the preparation of county budgets.

Lafayette College has received an endowment for the purpose of establishing and maintaining a new professorship of civil rights.

A course in the problems of citizenship has been established at the University of Missouri and is required of all freshmen in the university. This course consists of three lectures a week throughout the year on the fundamentals of the social sciences, and two additional meetings each week, in sections, in which the students write themes on the subject matter of the course. These themes serve as the basis for instruction in English. The purpose is to combine the freshman work in English with a general course in citizenship, to which students in their first year in the university will devote one-third of their time. The lectures in the course are being given by Dean Isidor Loeb.

The New Mexico Taxpayers' Association has completed a study of the cost of state and local government as a preliminary step in arriving at the proper needs of the state and its institutions and in ultimately devising a revenue code that will fully meet such needs. All the resources of the association have been placed at the disposal of a special state revenue commission provided for at the last session of the legislature. In addition, representatives of the association visited the various counties and cities of the state and coöperated with representatives of the state tax commission in assisting local officers with the preparation of their budgets, and in determining tax levies for the ensuing year.

The New York Bureau of Municipal Research has in hand studies on the following subjects: assessment and valuation of real property in American cities; budget-making and financial administration in state government; revision of legislation relative to form, contents, and preparation of the budget of New York City; housing problems in American cities; New York City charter revision; "pay-as-you-go" policy (a study based on the experience of New York City); public health educational methods; and taxation of public utilities.

Following his retirement from the Pan American Union, September 1, Mr. John Barrett announced the early organization of a popular and unofficial league of American countries and peoples. He outlined the plan as follows.

"Supported by the favorable attitude of a remarkable group of representative men in every country of North, Central and South America, I shall contribute my spare time during the next few months to forwarding a great civic international project which should appeal to general public interest. It involves the carrying to early completion of the organization already initiated by me, but here announced for the first time, of a great popular and practical league of American countries and peoples, which will probably be known as either the League of the Americas or the Pan American League. Its purpose will be to unite effectively for Pan American and Inter-American progress and peace that large and rapidly growing number of men and women in the Americas who realize the immense possibilities for the good of the Western Hemisphere which can result from their organized and coöordinated economic, social, and intellectual coöperation, free from governmental, political, or official control. It will in no sense be a special agency of the United States for advantage over other American

countries or antagonistic to Europe or Asia, but a natural and logical coöperation of Western Hemisphere peoples, from Canada to Chile, for Western Hemisphere good. A new and important feature in Pan American undertakings will be the active participation of Canada and Canadians, who heretofore have been treated as outside the Pan American family. It will in no sense rival or clash with the work and prerogatives of the Pan American Union, which is strictly official and hence limited in its popular activities and influences. It will coöperate with and enlarge upon the work of the powerful Pan American Society of the United States, whose headquarters are in New York, and of which I had the honor to be the founder several years ago. The initial membership will be composed of men and women from the countries of North, Central and South America interested in practical Pan Americanism. In each country a national charter of uniform wording will be sought, making a federation both national and international in character, while coöperative in both spirit and fact."

The city of Winnipeg, in June, 1920, used proportional representation in the election of its ten representatives in the provincial assembly. This was the first instance of parliamentary elections under the Hare system in Canada. Furthermore, the number of votes cast—48,246—was by far the largest in any constituency in which the single transferable vote system has as yet been employed. The fact that there were forty-one candidates entailed a long series of operations before the count was completed. Only 819 invalid ballot-papers, or 1.7 per cent, were found. Local comment on the election indicates that the system worked very satisfactorily. An account of the election will be found in the August issue of *Representation*, the journal of the Proportional Representation Society of England.

## BOOK REVIEWS

EDITED BY W. B. MUNRO

*Harvard University*

*The Budget and Responsible Government.* By FREDERICK A. CLEVELAND AND ARTHUR EUGENE BUCK. With an Introduction by William Howard Taft. (New York: The Macmillan Company. Pp. xxxiii, 406.)

*Evolution of the Budget in Massachusetts, 1691-1919.* By LUTHER H. GULICK. (New York: The Macmillan Company. Pp. xiv, 243.)

These two books are important contributions to the literature on the budget movement in the United States. *The Budget and Responsible Government* appears under the joint authorship of Dr. Frederick A. Cleveland and Arthur Eugene Buck, both of whom have at some time been identified with the New York Bureau of Municipal Research. Dr. Cleveland has written Parts I, IV and V which deal with the general relation between the budget and responsible government while Mr. Buck has contributed Parts II and III which indicate in a practical manner just how far the American states have actually proceeded in the direction of more responsible government through the centralization of administration and the adoption of budget systems.

Dr. Cleveland lays emphasis on the fact that popular control is the essence of democracy and that to make such control effective it is necessary to provide some mechanism by which the popular will can function. The principal parts of this mechanism, in the opinion of Dr. Cleveland, are to be found in administrative reorganization and a properly adjusted budget system through which responsibility can be located and enforced. After setting forth the essential features of popular control the author proceeds to discuss the way in which the budget system should be tied up with the movement for responsible government and executive leadership.

The constructive proposals suggested are practically the same as those set forth in the report of President Taft's commission on economy

and efficiency: First, that the executive should be responsible for the annual preparation of a financial and administrative program for carrying on the government. Secondly, that as an incident to such procedure there should be developed some means whereby the executive could personally present and defend his work-program before open sessions of the legislative body and before the whole country. Thirdly, that it is necessary to establish adequate control over the executive, both by the representative branch and by the electorate, through the development of a procedure of investigation, criticism and discussion in which each member should be called upon to vote for or against the financial program section by section and as a whole. Finally, in the case of a deadlock there should be an appeal to the electorate. As a part of these constructive suggestions Dr. Cleveland also points out that effective budget procedure is inextricably bound up with the movement for administrative centralization and that one cannot succeed without the other. Although he does not state so in definite terms it appears that Dr. Cleveland's plan would, in the last analysis, necessitate a parliamentary system of government.

Mr. Buck in Parts II and III of this book has given a very thorough and interesting account of the actual progress of the movement for administrative reform and of plans for centralizing executive responsibility in such states as Massachusetts, Illinois, Nebraska and Idaho, as well as an outline of the essential features and practical workings of typical budget systems in certain commonwealths. Mr. Buck's practical and critical comments on the budget movement and what it has actually accomplished balance very nicely the more or less philosophical discussion of the first part of the book.

Dr. Gulick in writing of the *Evolution of the Budget in Massachusetts* is on familiar ground, because of his experience as secretary of the joint special committee on finance and budget procedure of the Massachusetts legislature. His researches show that although the budget system was not the conscious aim of reformers until the last decade, the present procedure is really the outcome of a gradual evolution which began as early as 1691, culminating finally in the budget amendment of 1918 which imposes upon the governor the duty of preparing each year a complete financial program for presentation to the legislature. This amendment, as well as earlier attempts to improve financial procedure in the commonwealth, was the result of an effort to "control the tremendous increase in governmental expenditures" and to keep direct taxes down.

Commenting on the practical workings and results of the Massachusetts budget system the author states that three years operation is too brief to establish any definite conclusions but that several facts stand out clearly in recent experience as follows: (1) There is no great popular enthusiasm in budget reform, and public interest in the matter is limited to the more progressive public servants and to business men in the larger cities. (2) A permanent budget staff is necessary for the routine work of gathering and sifting estimates. (3) The success of a budget system depends upon its environment. In 1910, for example, the initial effort to establish an executive budget failed because of friction and political differences between the executive and legislative branches; while in 1920, at a time when there was a conspicuous degree of harmony in budget matters, the governor assumed responsibility for a complete budget with marked success. That the environment in Massachusetts is not wholly conducive to executive responsibility is shown by the fact that the governor is not given all the power essential to effective leadership. He is not required to present his budget in person and "thus to make his responsibility dramatic and personal," and the only budget that is publicly advocated before the legislature under the present procedure is the revised plan of the house committee on ways and means, the explanation and defense of which are in the hands of a member of the legislature. In fact the leadership in fiscal affairs is largely in the hands of the legislature which may account for the success of the system in Massachusetts. (4) Finally the budget system of Massachusetts, in spite of certain defects and weaknesses, "has come to stay" and its establishment is a step that will not be retraced. In Dr. Gulick's opinion; "It has resulted in a more systematic and sounder financial policy, and is to be credited with having prevented an unnecessarily large increase of state expenditures during the unsettled war years." The book is one which should appeal to the practical administrator as well as to the student of political science.

A. C. HANFORD.

*Harvard University.*

*My Quarter Century of American Politics.* By CHAMP CLARK.  
(New York: Harper and Brothers. Two volumes. Pp. 495;  
472.)

In these volumes ex-Speaker Clark gives a brief account of his early life in Kentucky and Missouri and a full account of his experiences in

politics, of his observations on men and events that have come within his view during the quarter of a century of his public life.

Clark was first elected to Congress in 1892, was defeated in 1894, reëlected in 1896 and since then he has been continuously in Congress, being Speaker of four successive congresses (1911-19) and leader of the Democratic opposition for the greater part of the time when his party was in the minority. He imbibed an early interest in politics from his Kentucky folks. He deals not only with what he knows but with men and events that were on the stage before he was born. It happened that he was born on the very day that Webster made his Seventh of March speech in 1850. Clark makes use of this coincidence to indulge in a piece of unhistorical extravagance to the effect that this speech "ended Webster's political career," "made his name anathema," and "caused his picture to be turned to the wall in hundreds of thousands of homes." He then quotes in full Whittier's famous "Ichabod," in which Webster was pilloried by the anti-slavery poet.

Throughout his volumes Mr. Clark digresses to make historical comments which are not altogether reliable. His volumes contain a great deal of racy gossip and cloak room stories and character sketches. He tells stories and speaks rather fulsomely of the prominent men he has known—Speakers Henderson, Reed, Crisp, and Cannon; Presidents Cleveland, McKinley, Roosevelt, and Taft; Senators Vest, Gorman, Hill, Harris, Jones and others; Cabinet members Carlisle, Gresham, Hay, Olney, Lamont, Alger and Sherman; of Dingley, Payne, Tom Johnson, Hepburn, Galusha A. Grow and many other house members.

He gives two chapters to the institutions of Congress and the speakership; he considers the greatness and merits of early speakers; he discusses at length notable political and party struggles—the struggle over the house rules, many tariff struggles, the silver agitation, Speaker Reed's ruling on the quorum (1890), Cleveland's special session called for the repeal of the silver purchase act (1893), which, he says, "split the Democratic party wide open and was the cause of all our woe." He discusses the Sickles trial of long ago, approving Sickles' murder of Philip Barton Key and applauding his "righteous acquittal." He talks of congressional funerals, "lame ducks," wit and humor in Congress, heredity and physique in politics, congressional duels and personal encounters in senate and house, of orators and stump speakers from Demosthenes and Cicero to our own day, concluding that "the best rule for speech-making ever made in all the world" is the five-minute rule of the house.



The good-natured Speaker, commenting upon congressmen and senators from Matthew Lyons to his own day, is almost uniformly favorable, not to say eulogistic. His complaisance leads him to treat party friends and party foes without discrimination in his compliments. There is one notable exception when he comes to deal with the "vile and malicious slanders" of one Colonel William Jennings Bryan, of Nebraska. To this subject the Speaker devotes a chapter entitled "Baltimore," in which he recounts his early friendly offices toward Bryan and the latter's "outrageous conduct" at and immediately preceding the Democratic convention in which, through Bryan's intrigue and the operation of the two-thirds rule, Clark was "gouged out" of the presidential nomination of his party. Clark attributes Bryan's hostility to two facts—first, Clark's refusal to let Bryan "pull me around by the nose" and, second, to Bryan's renewed ambition for the presidential nomination. Clark's account of the original and early use of the two-thirds rule is not quite in harmony with the historical facts in the case, but what nettled him most was that, while he led all candidates on thirty ballots and had a clear majority on eight, William J. Bryan violating "his instructions and by base and false insinuations—to use no uglier word—robbed me of the nomination to which I was entitled by all the rules of decency, justice, honesty, common sense, and fair dealing."

Throughout these gossiping and voluble pages, we find much of repetition and more of exaggeration. Three times he tells that Speaker Henderson's leg was taken off piecemeal, which leads one to suspect that Speaker Clark's book came into being by a piecemeal, Chau-tauqua-lecture process. The language of superlative and extravagance is found in every chapter, if not on every page, and on every conceivable subject. A few illustrations may be cited from many:

The Presidency is "the most powerful office ever devised by the wit of man."

"Washington is the finest capital in the world."

"Congress is the greatest legislative power in all history."

To say that many senators and representatives are financially dishonest "is as big a lie as has been told on earth since Ananias and Sapphira had that ill-starred land transaction."

"Pike County, Missouri, is one of the largest, richest, and most beautiful counties in the world."

"John Morgan's raid was the greatest ride ever taken since horses were first broken to bit and rein."

"George D. Prentice was one of the greatest masters of English prose that this country has ever known."

"John C. Breckinridge was the handsomest man that ever straddled a horse, the most majestic human being I ever clapped eyes on."

Bryan's cross-of-gold speech was "one of the most opportune since the confusion of tongues on the plain of Shinar at the foot of the unfinished Tower of Babel."

The Constitutional Convention (1787) "was composed of the wisest men that ever met under one roof; the most sensible thing they devised was the separation of the powers—legislative, executive, judicial—the next wisest was to divide Congress into two houses"—an indication of the author's archaic view of the Constitution which in one of its parts, as he contends—that guaranteeing to the states equal representation in the senate—is unalterable for all time and is not subject to amendment.

In spite of its faults, which are easily forgiven to the genial author, the work is one of some value to our political literature. It is decidedly interesting and engaging reading. The lay reader may learn something from its pages though it may give him an undue perspective and emphasis in its attempts at history. But every such work by a politician of long public service adds to the sum total of our knowledge of past politics. While a great part of what Speaker Clark tells is not of much importance, much of it illustrates by anecdote and personal touch the characters and services of important public men in a notable era in American history.

JAMES A. WOODBURN.

*University of Indiana.*

*Marse Henry.* Recollections of Men, Women and Events During Eight Decades of American History. By HENRY WATTERSON. (New York: George H. Doran Company. Two volumes.)

It is somewhat unusual for a review to be personal, but perhaps an unusual book may justify it. At twelve years of age—in the memorable campaign of 1884—I began to read the editorials of Mr. Henry Watterson in the Louisville *Courier-Journal*, and learned to fix my eyes on the "Star-eyed Goddess of Reform" and to hate the "Robber Barons." I followed the lead of the editor through the campaign of 1896, by which time I had finished college and was beginning to do a little thinking on my own account; but it was the editorials in the

*Courier-Journal* that helped me breast the tide of free silver in a community where few stood for the gold standard. Such must be the story of a good many voters of today.

*Marse Henry* is the life story, somewhat scrappy in form but highly interesting, of the last of a list of illustrious editors. They lived in the days of personal journalism and their editorials counted. As a Washington correspondent, the son of a member of Congress, Mr. Watterson found easy access to the great, the near great, and the commonplace. Indeed, he seems to have been acquainted with most of the worth while statesmen, from Pierce, Cass, Douglas and Lincoln to Cleveland, Roosevelt and Wilson. He sat on the platform when Lincoln was inaugurated, but later joined the Confederacy against his better judgment. From 1872 to 1896 he took a leading and sometimes determining part in the councils of the Democratic party, one time shaping the platform for tariff reform somewhat against the wishes of the candidate, Mr. Cleveland. Nor were his familiars confined to statesmen, for he was equally at home among actors and musicians, and had a bowing acquaintance with authors, scientists—and gamblers, including the sovereign of Monte Carlo. Few men now living can say that they sat down to dine with Huxley, Spencer, Hill and Tyndall when they were practically unknown.

This is a book to be enjoyed, not criticized, but the serious historian will find in it some things of use in making up his ponderous tomes. It throws an interesting light on the Liberal Republican Convention of 1872. The election of 1876 has been pretty thoroughly worked, but Mr. Watterson's account of the happenings of that year, *quorum magna pars fuit*, is worthy of notice. Some may still differ with his estimate of Cleveland, but it cannot be ignored. As the champion of the Democratic party when that party stood for large "personal liberty," no sumptuary legislation, it is not surprising that he is now somewhat disgusted with the country for having gone dry and feminine. But one of the most surprising things to those uninitiated in the ways of politics will be to learn of the author's intimate friendship with so many prominent Republicans, including Blaine and Butler, when so much of his life was spent in unsparing denunciation of the Republican party and its leaders.

Mr. Watterson has caused the past sixty years to live again. He was chiefly interested in life as it centered about Washington, but his view extended from Louisville to the Riviera, and not the least interesting of the chapters are those dealing with his sojourns in Paris.

DAVID Y. THOMAS.

*University of Arkansas.*

*Alexander Hamilton.* By HENRY JONES FORD. (New York: Charles Scribner's Sons. Pp. x, 381.)

It is difficult to imagine a better brief life of Alexander Hamilton, the statesman. Not being in the Boswellian manner, this is not so good a picture of Hamilton the man. But neither space nor, apparently, the plan of the work, permitted much anecdote, description or discussion of personality. Nevertheless, where occasion offers, there are incisive, fair-minded and luminous analyses of character. One lays down the book with a clear grasp of Hamilton's important contributions to American nationality, and a fair idea of the manner of man he was.

After two brief but adequate chapters on Hamilton's antecedents and youth, seven chapters are devoted to the Revolutionary period, with Hamilton's military and political activities, and his marriage to Elizabeth Schuyler. A clear and masterly discussion of Hamilton's part in the making of the Constitution occupies four chapters, in the midst of which is inserted one on his law practice. Hamilton's services in the cabinet and his subsequent political activities occupy three more, while the two concluding chapters discuss his apparent achievements and his real accomplishments.

Uniform fairness, fascinating style and illumination of American political history are the outstanding characteristics of the book. The last trait was to be expected from an author of Mr. Ford's thorough scholarship in this field. As to fairness, not only is Mr. Ford just to Hamilton's opponents—even Burr—but he has succeeded in avoiding that common pitfall of biographers—hero-worship of his subject.

Two quotations exemplify the style and the author's remarkable comprehension of Hamilton's personality and services. "The peculiar heroism of his statesmanship is his utter fearlessness of unpopularity." (p. 168). "Hamilton is an Alan Breck with a genius for statesmanship." (p. 370). These two theses—epitomizing the phases of the subject—are developed most satisfactorily. The present writer has seen no other work on Alexander Hamilton so illuminating. If the rest of the series ("Figures from American History") measures up to the initial volume, the publishers will merit the gratitude of the reading public.

The presswork is excellent, including the proofreading. The book has a fair index and the penultimate chapter contains a discussion of the source and secondary materials pertaining to Hamilton.

MILLEDGE L. BONHAM, JR.

*Hamilton College.*

*Leonard Wood—Administrator, Soldier and Citizen.* By WILLIAM HERBERT HOBBS. With an Introduction by Henry A. Wise Wood. (New York: G. P. Putnam's Sons. Pp. 272.)

This book is not a formal biography. In its nine chapters there is a discursive treatment of the chief phases of General Wood's career, mingled with much adverse criticism of the present administration's attitude toward the war both before and after America's entrance into it. The author's point of view as to national policy may be gathered from the following statement on pages 40 and 41:

"If time can be found for full deliberation upon the Utopian proposals of the pacifist set forth with so much noisy propaganda, the sound sense of the nation may be relied upon to assert itself in their repudiation; for Americanism has from the beginning of our history been a dominant national trait, and throughout history nationalism has always been immensely stimulated by triumphs in foreign wars."

The book is obviously a campaign document and not a very good one. It is so fulsome in its eulogy of its hero and so bitter in its denunciation of all who disagree with him, but above all of President Wilson, that it overshoots its mark in both directions. Even a campaign document should present some appearance of judicial balance and desire to set forth the truth. If it were not for the descriptive words on the title page, more than half of this book would convey the impression that President Wilson is its hero in the sense in which Satan is the hero of *Paradise Lost*. The carelessness with which the book is prepared appears from the statement (p. 36) that after attending the German army manoeuvres in 1902, General Wood returned to warn his government of impending danger, but "the warning was unheeded and bitterly resented by the pacifist Government in power." The pacifist head of the American government in 1902 and for six years thereafter was Theodore Roosevelt.

LAWRENCE B. EVANS.

*Washington, D. C.*

*The Obligation of Contracts Clause of the United States Constitution.* By WARREN B. HUNTING, Ph.D. (Johns Hopkins Univ. Studies in Historical and Political Science, Series xxxvii, No. 4. Baltimore: The Johns Hopkins Press. 1919. Pp. x, 120.)

The author of this monograph was killed on July 15, 1918, while in service in France, with the result that the title under which it is pub-

lished indicates the scope of its original design rather than its actual performance. The subject to which it is essentially devoted is the historical and legal basis of the Dartmouth College decision.

By section 10, Article 1 of the Constitution, the states are forbidden to pass laws "impairing the obligation of contracts." In his concluding paragraph, Dr. Hunting writes of this provision: "It is very plain that the Convention had in mind only retrospective laws as impairing the obligation of contracts, and it is almost equally plain that they had in mind only contracts of private individuals." In the face of this fact he advances the thesis that the extension to public grants which the clause just quoted received in the decisions in *Fletcher v. Peck*, and *Dartmouth College v. Woodward* had a good deal of basis in accepted legal and political theories of the time, and in the common law as well.

His argument may be summarized as follows: At the common law a franchise was property. The grant of a franchise, like that involved in *Dartmouth College v. Woodward*, stood therefore on the same legal footing with a grant of land, such as was involved in *Fletcher v. Peck*. A grant, however, is but a conveyance, and a conveyance is characterized by writers on *Naturrecht*, as well as by writers on the civil law, as "a contract." Indeed, Blackstone himself was quoted by Marshall in *Fletcher v. Peck* as classifying all contracts as executory and executed, and as declaring that a "contract executed differs in nothing from a grant." But, Dr. Hunting continues (p. 34), "call a conveyance a contract and you raise the suggestion that there must be an obligation; you emphasize the fact that the grantee has his rights merely by the consent of the grantor; you obscure the part which the state takes in the matter; you suggest the idea that if one man obtains his right solely from another, he necessarily holds it subject to the will of the latter, who can go no farther than to bind himself never to exercise the power of revocation." Marshall's assertion, therefore, in *Fletcher v. Peck*, that a grant, though of itself an executed contract, implies an executory contract on the part of the grantor not to reassert his right over the thing granted, was not extravagance, albeit the rule of estoppel with which he sought to support it had no application to the case.

This argument breaks down at an essential point. None of Dr. Hunting's citations (pp. 19-36) go to prove more than the obvious fact that a conveyance must be preceded by a contract—the fulfillment of which is compellable at English law by an action for specific per-

formance—not that a conveyance is followed by an obligation *in personam* against the grantor. The test of the validity of Marshall's doctrine that an implied contract supplements a grant is quite simple. It consists in the question whether an action for breach of contract would lie against a grantor who attempted to disturb the grantee in the use of the thing granted; whether, in fact, a grantor would find himself in a different situation from that of anybody else attempting the same thing. The answer being no, it follows that Marshall's implied contract theory was pure moonshine.

The fact is that Dr. Hunting demands too specific a provenance for the doctrine of *Fletcher v. Peck* and *Dartmouth College v. Woodward*. The basis of that doctrine was not legal or even theoretical in a narrow sense; rather it was ethical and it is shown to be so in Marshall's own words in both cases, as well as in the later case of *Ogden v. Saunders*. In this connection Dr. Hunting seems to have overlooked the significance of Marshall's admission in the *Dartmouth College* case that Parliament would have had the power to revoke the charter the moment it was granted, though all would have recognized "the perfidy" of the act, and that New Hampshire could have done the same thing at any time *till* the adoption of the Constitution. This admission seems to infer that Marshall was well aware of the distinction which the notion of parliamentary sovereignty had established between *moral* and *legal* obligation. Indeed, Dr. Hunting himself speaks at one point (p. 75) of "a state whose legislature is legally omnipotent" though in other passages (e.g., pp. 71 and 94) he seems to regard Parliament's omnipotence as either a crude fact which had not at this date been assimilated to the law, or as something illegal. I must add my conviction that Dr. Hunting has exaggerated the closeness of connection in Marshall's mind between *Fletcher v. Peck* and *Dartmouth College v. Woodward*. It is true that Story and Washington both build directly upon *Fletcher v. Peck* in their concurring opinions in the latter case; but Marshall does something quite different. This, however, is a matter on which there is no space to enter upon here.

Dr. Hunting's criticisms of Shirley (pp. 60 ff. and 94 ff.) are more convincing than his animadversions upon Bartlett's argument (pp. 76–82). His showing (pp. 72–75) that the distinction between public and private corporations was not clearly established at the time of the *Dartmouth College* decision is important. His suggestion in a footnote (p. 88) that "a legislative act repealing misused or non-used

franchises should [not] be denied effect by the courts, if the fact of misuser or nonuser be shown," while it overlooks Marshall's invocation of the principle of the separation of powers in an analogous matter, is also important; and the same must be said of his remarks on the subject of "consideration" (pp. 106-107), a topic to which he had designed to devote an entire chapter. The examination of the views of James Wilson, the reputed framer of the obligation of contracts clause (pp. 115-116), would have been strengthened by recourse to his opinion in *Chisholm v. Georgia*.

Dr. Hunting has left us a study demanding the serious attention of students of American constitutional law. Many of the questions which it raises probe very deep. The answers which it returns to these questions, if open to challenge, are for that very reason provocative of thought. Both questions and answers reveal a mind of unusual penetration and independence, the loss of which to the profession must be cause for deep regret. This volume is worthy of its place in the distinguished series in which it appears.

EDWARD S. CORWIN.

*Princeton University.*

*The National Government of the United States.* By EVERETT KIMBALL, Ph.D. (Boston: Ginn and Company. Pp. v, 629. Appendix.)

Because it is the newest book upon the subject as well as the only first-rate college text of recent date dealing exclusively with the national government, Professor Kimball's work has been received with more than usual interest by those engaged in the study and the teaching of American government. The expectations to which its announcement gave rise have been fully realized, and its quality and character undoubtedly will gain for it not only a wide use in the class room, but also a permanent place as one of the standard works of reference upon the subject. It is peculiarly well adapted for both purposes, and perhaps its distinguishing characteristic is that it combines successfully the qualities of a workable textbook with those of a treatise.

Professor Kimball frankly describes the government from the constitutional viewpoint. "I have endeavored to show the historical origins and the development of our national political institutions and to present an adequate picture of the actual workings of the government," he writes. "But I also have attempted never to lose sight of the



fact that the Constitution is the supreme law of the land, and its interpretation by the Supreme Court is, until altered, authoritative. The important fact is emphasized that in all phases of our national life the government is a government of law." The frequent and at times extended quotation from the opinions of the Supreme Court is declared to give the book "a two-fold character, that of a textbook in which institutions are described and analyzed, and that of a source book in which appear the actual words used by the court in expounding or limiting the powers of the government."

In the author's hands this method has produced a book which has not been surpassed in the presentation of the fundamental facts concerning the government of the United States. The student who masters its contents will have acquired a grip upon the essential principles of our national political system which will give him a firm foundation for subsequent political thought and action. He also will have gained a practical understanding of the actual processes of the government and the politics of the nation; for Professor Kimball has turned to the Supreme Court to find out what the government actually is rather than for an exposition of what it ought to be, and in addition he has presented an adequate description of the political as contrasted with the purely legal aspects of our institutions. There are no better chapters in the book than the two entitled "Congress at Work," and none better anywhere upon this subject.

The book is arranged along conventional lines. The first four chapters give the constitutional background, one, two and three being historical and four expounding fundamental constitutional principles. Political issues and parties are described and discussed in the two following chapters, after which ten chapters are devoted to an account of the organization and functions of the three great departments. This part of the book is about equal in volume to the entire space devoted to the national government in most of the other standard texts (Kimball pp. 423, Bryce 410, Beard 437, Munro 387). The remaining six chapters treat of the war powers of Congress, finance, the regulation of commerce, the federal police power, foreign affairs, and the government of territories. The Constitution is printed as an appendix and there is an excellent index.

From the standpoint of thoroughness and completeness Professor Kimball has left little to be desired. Few questions connected with the national government have escaped consideration. Occasionally one would wish for fuller discussion, as in the case of citizenship or of

presidential primaries. In general, too, it may be said that more attention has been paid to the organization and powers than to the actual operation of the various parts of the government, although it is not intended to imply that the latter phase of the work is inadequate. The chapters on the war powers, the regulation of commerce, the national police power, and, in lesser degree, that on finance, would not be out of place in a treatise on the constitutional law of these vital subjects.

This book is singularly free from the minor errors which sometimes mar an otherwise excellent work. The quotation, "take care that the laws be faithfully enforced," (p. 59) is the sort of a slip that is particularly hard to detect once it has crept into a manuscript. The number of Republican votes required to entitle a congressional district to its second delegate in the Republican national convention (p. 158) is 7,500, instead of 7,000. There are those who would question the "absolute accuracy" of referring to "a citizen of the United States and the resident of a state" (p. 76). But there are few instances in which those who use this text will have to correct it. Clarity rather than brilliancy marks Professor Kimball's style, and on the whole the book and the several chapters possess unity in satisfactory degree. An exception, perhaps, is the treatment of the election of the President, particularly in connection with the composition of the national conventions (pp. 152, 156, 158). The nature of these criticisms, however, simply emphasizes the excellence of the production. As a text and as a treatise this book is assured of a permanent place in the literature of American government.

RALSTON HAYDEN.

*University of Michigan.*

*The Foreign Service: Report on.* By the Committee on Foreign Service of the National Civil Service Reform League. (New York: 8 West 40th Street. 1919. Pp. 322.)

This report is the result of a most searching investigation both abroad and in this country concerning the foreign service of the United States. Senators, congressmen, officials of the departments of state and of commerce, members of the diplomatic and consular branches of the service, and others were called on for information and suggestions. The committee engaged in this survey was composed of Ellery C. Stowell, Chairman, Richard H. Dana, George T. Keyes, Ogden H. Hammond, Ansley Wilcox, and H. W. Marsh, secretary.

The data presented in this report includes most valuable information concerning the organization of the department of state and of the whole foreign service, the functions of all officials, rules and regulations on the whole subject, legislation by Congress and interesting facts regarding the foreign service of certain other countries, such as England, Germany and Japan. Extracts from hearings before congressional committees are also included.

This array of information is of the utmost value to students of politics as well as to all American citizens interested in the efficiency of our foreign service. There is a wealth of material in this compact volume which might be utilized to advantage by journalists and others who have occasion to write on subjects affecting our foreign relations. For example, the testimony of former members of the diplomatic and consular services, as well as the mass of statistical data is often most suggestive and full of interest.

The committee has not only gathered its facts with great thoroughness; it has intelligently studied these facts, and reached definite conclusions of practical importance. Its recommendations are summarized as follows:

"1. That the entrance examinations to the foreign service be improved and placed more strictly on a merit basis. . . .

"2. That there be an adequate increase of salaries in the foreign service. . . .

"3. That embassies, legations, and consulates be purchased in the principal cities. . . .

"4. That the rule, known as the state quota, according to which appointments in the foreign service are distributed among the states in proportion to the number of inhabitants, be abolished. . . .

"5. That political considerations be entirely eliminated and that the merit principle be applied to appointments and promotions in the foreign service. . . .

"6. That the President and other appointing officers be urged to select the representatives of international conferences more largely from the foreign service and from the experts in the employ of the government. . . .

"7. That the Americanization of the consular service be completed by the appointment of salaried vice-consuls, after examination, to act in the place of foreigners now serving etc., . . . .

"8. That the foreign service be reclassified. . . .

"9. That the Department of State publish a Foreign Service Annual.

"10. That the organization and personnel of the state department be perfected and more adequate compensation provided. . . .

"11. That the relations between the various departments, boards, and commissions concerned in the supervision of control of our foreign affairs be carefully defined. . . .

"12. That Congress be urged to enact a law to cover the above recommendations in so far as possible, and that the President be urged to issue executive orders to supplement and complete such legislation."

The fifth recommendation to the effect that the merit principle be applied to appointments and promotions in the foreign service is of particular interest. This suggestion originated with Congressman Rogers of Massachusetts, whose labors in behalf of the foreign service deserve highest praise. It reads: "That the President be urged to fill the post of minister by the promotion of capable officers in the foreign service and that when a vacancy occurs the secretary of state be required to submit to the President for his consideration the names of secretaries and consuls who merit promotion." In limiting this requirement to ministers and exempting ambassadors, the committee has prudently compromised by recognizing the exigencies of the situation which at times demand that the President should be free to select the most representative Americans for such important posts as London, Paris, and elsewhere.

In its treatment of the question of the place of the "spoils system" in appointments, the committee is guilty of a *non sequitur* in its argument when it says: "The necessary support for measures of recognized value can at times be secured only at the price of political barter and humiliating compromises. If the President were protected against these blackmailers and against this political pressure, needed measures of legislation could be secured more easily on their merits, or if not, the President and party leaders would be forced to maintain a campaign of education to bring the legislators in line and force them to enact the meritorious legislation." To protect the President by weakening his power of appointment seems a rather curious suggestion.

There may be reasonable doubt whether the time has yet come when the President should be restricted in his appointments of ministers to those already in the service, but the proposal that before making an appointment he should be required to consider the names of secretaries and consuls deserving promotion through merit is entirely reasonable and felicitous in character. It would constitute a salutary check on the tendency of Presidents to reward "deserving" partisans, and at

the same time would encourage those in the service to seek preferment through merit.

There is much in this admirable report inviting praise and comment, but the space allotted this review does not permit. By way of summary, the report aims first, to furnish accurate information as to what has already been accomplished to render the foreign service more efficient; secondly, to present the actual state of affairs; and thirdly, to present criticisms and suggestions tending to insure the improvement of the service along sensible, practical lines. It should be read with great care by all Americans who desire to see the nation most efficiently represented abroad at a time when international affairs have become of such vital significance to the United States.

PHILIP MARSHALL BROWN.

*Princeton University.*

*Foreign Rights and Interests in China.* By WESTEL W. WILLOUGHBY. (Baltimore: Johns Hopkins Press. Pp. xx, 594.)

As the basis of his work Professor Willoughby makes use of the half dozen most complete collections of China's foreign treaties, conventions, loan contracts, railway agreements and the like, chiefly MacMurray's, which is the latest and seems to include every obtainable document down to last year. He next determines the essential chapter subjects for his book; and here, we conceive, he has lost sight of no topic upon which light is likely to be sought, whether by specialist or by general reader. Among these topics are extra-territoriality, foreign commerce and the rights of foreign merchants, concessions and settlements, leased areas, the open door, Japan's political ambitions in and towards China, opium, China's foreign debts, railway loans, and foreign control. Each of these themes—and others no less essential are necessarily omitted—has been developed from the appropriate treaty clauses or other formal stipulations. His explanations and comments are thorough-going and illuminating. They are never wearisome, as legal discussions sometimes are; and they are not infrequently reinforced by appropriate passages from Morse, Bronson Rea, Overlach or Hornbeck, or from Chinese writers such as Mr. Tyau and Mr. Koo, and by extracts from the speeches, or despatches or statements of the negotiators and government officials concerned.

From this book as from no other single source, so far as we know, can the financier estimate approximately China's income and her

present loan entanglements; the consular officers can here unravel the perplexities of foreign "settlements," "concessions," courts and jurisdictions; the missionary can discover just what are his treaty rights of travel, residence, and land tenure in the interior of the country; and the merchant can learn his due relations while in China (whether as buyer, seller, importer, duty-payer or steamer-owner), to other merchants around him and to the officials, Chinese and foreign, with whom he must deal. The diplomatist, the publicist, the student of international law, and equally the general reader cannot fail to recognize a large debt due to Professor Willoughby for this clarifying "handbook," as he too modestly describes his valuable and entertaining volume. In its 600 pages we found not one dull paragraph.

Nearly one quarter of the volume is devoted necessarily to China's complicated relations with Japan, territorial, railway, military, and financial, *i.e.*, loans in infinite variety. The Twenty-one Demands, the Shantung aggressions, the Manchurian encroachments, the secret covenants secretly arrived at, the riot of unsanctioned and insidious loans are described in clear direct narration. Article, clause, date, given without sensational comment, compose a cumulative indictment of Japan's unscrupulous methods and relentless aims. Strange it is that beside China's several oppressors in the past none has equalled the present day Japan, her own pupil in culture, her nearest neighbor, her almost kin in race, her natural ally in policy. But Japan recks not; she confidently continues to sow the wind; and the whirlwind at reaping time is not unlikely to involve us all! It is for the coming consortium, of which agency Professor Willoughby briefly speaks, backed by Britain and America, to forestall if not too late the threatened catastrophe.

It is to be hoped that Professor Willoughby may be able at an early day to prepare the other volume, of which intimation is given in his preface, dealing with the policies of the treaty powers in the past, from the ethical and practical point of view. Especially valuable would be his contemplated discussion of Japan's relations to China and kindred questions.

F. B. DREW.

*Cambridge, Mass.*

*The New Germany.* By GEORGE YOUNG. (London: Constable and Company Ltd. Pp. 325.)

*Die Verfassung des Deutschen Reiches von 11 August, 1919.* By DR. F. GIESE. (Berlin: Carl Heymanns Verlag. Pp. 456.)

*Die Verfassung der Republik Deutschösterreich.* By DR. ADOLF MERKL. (Vienna and Leipzig: Franz Deuticke. 1919. Pp. 184.)

Material for the systematic and critical examination of the new republican constitutions of central Europe is becoming available; and the three volumes here noted furnish important information about the new governments in Germany and German Austria.

Mr. Young's book is a journalistic account of the revolution and reconstruction in Germany up to the end of 1919. It includes chapters on the revolution, council government, the Treaty of Versailles, and the new constitution, with a translation of the latter document. It gives a record of events, based largely on personal observation, and written with a facile pen; but makes no attempt at a comprehensive analysis either of the revolutionary movement or of the new governmental system. The reaction of the different German parties toward the Peace Treaty are presented with a tone of sympathy, which reflects the opinion of those English liberals who consider the treaty both unjust and unsound. The new constitution is described as a very considerable advance in democratic development from the old régime, but as a compromise in comparison with the more radical views which were dominant in the early days of the revolution.

Dr. Giese, professor of public law at the University of Frankfort, has prepared a detailed annotated edition of the new German constitution. An introduction of sixty pages, on the foundation of the new government, presents a legal analysis of the steps in the transition from the former empire to the republic, and describes the stages in the process of preparing the new fundamental law. This is followed by the text of the constitution, with extensive notes and bibliographical references to each chapter and article. The volume is therefore a handbook of great value for the detailed analysis of the provisions of the new constitution, at the beginning of its operation.

Dr. Merkl, an official in the chancellery of German Austria, presents, in his monograph, a more systematic but less detailed analysis of the new republican government of that country. The first part deals with the general principles of the transition and the new system; while the

second deals more specifically with the different organs of government. A striking contrast with Germany is seen in the fact that in place of a single document, the sources of the new Austrian constitutional law (as of the former Austrian government) are to be found in a long series of measures. A list is given, with the titles of 31 statutes, 2 resolutions and one declaration, promulgated from October 30, 1918 to April 4, 1919. The most important are the provisional constitution of December 19, 1918, and two statutes of March 14, 1919.

It is of interest to note that both Dr. Giese and Dr. Merkl emphasize the doctrine of the complete legal discontinuity between the old and the new political systems. Attention may also be called to the declaration (in a statute of German Austria, March 12, 1919) that German Austria is a constituent part (*Bestandteil*) of the German *Reich*, in connection with the paragraph in the German constitution (article 61) providing for the representation of German Austria in the German Reichsrat, which the Peace Conference required to be canceled.

J. A. F.

*France and Ourselves. Interpretative Studies: 1917-19.* By HERBERT ADAMS GIBBONS. (New York: The Century Company. Pp. 286.)

For four years France bore the brunt of the German attack. During this time over a tenth of her soil, including some of her richest industrial provinces, were in German hands, the line of battle was never much over one hundred miles from her capital city, and twice was at its very gates. During these four years practically every able-bodied man between eighteen and fifty, except those imperatively required by necessary work at home, was in the army. All of France not occupied by the enemy was flooded with refugees from the invaded regions; the entire industrial life of the country was disorganized; nearly a million and a half of the men of the country were actually killed, and over half as many mutilated for life. There is scarcely a family in France which has not suffered not only heavy pecuniary loss, but bereavement of one or more of its members.

To all this must be added the terrific moral and mental strain through which France has passed. To the French a German conquest meant the end of all they held dear in their national life, and they realized to the full the enormous force of the German attack and the danger that



such a conquest might be its result. Three times, indeed, once in the first rush of 1914, once when the French offensive failed in the spring of 1917, and once again in the spring of 1918, it looked as though defeat were near, and until within a month of the armistice no one in France, except, perhaps, the small group of able and self-confident men who directed her armies, could do more than hope that the country would escape disaster.

This is a brief and inadequate statement of a few of the facts which Americans should bear in mind when they judge the temper and policy of France today. These facts and many more can be learned from reading Mr. Gibbons' book, and all the more vividly because the book is not a cold-blooded study made after the event, but a reprint of articles written at white heat during or immediately after the war while the agony of the struggle was in the writer's mind. Because written in this way, the book is full of a passionate eagerness for friendship and coöperation between France and America, which leads the author sometimes to statements, such as that on page 74, that "Deep down in the heart of every American is a passionate love of France," which it may be doubted if he would write today when many French and Americans are passing through the inevitable phase of reaction from the tremendous emotion which united the two countries during the war. Indeed, it may be doubted whether any but a small minority of any nation are ever inspired for long by a feeling which can fairly be described as "passionate love." We suggest for Mr. Gibbons' consideration when he is next moved to use such a phrase that he should read the conversation between Boswell and Doctor Johnson in which the great doctor said that public affairs vex no man, and that in spite of his strong feeling at the iniquities of the Whig opposition in the house of commons, he never slept an hour less nor ate an ounce less meat. So Mr. Gibbons' zeal leads him to slur over the fundamental differences between the Wilsonian policy of internationalism tinged by sentiment and the French realistic view of their relations with Germany. He is too anxious to see France and America working hand in hand to be willing to admit the difficulties that stand in the way so long as Mr. Wilson or those in sympathy with his policy remain at the head of affairs in the United States.

Much of the book must be classed less as history than as propaganda, though propaganda of a very high-minded type. In parts, too, as in the chapter dealing with the case against Caillaux, which was written in November, 1919, some months, that is, before the case came on for

trial, the author's account would have to be supplemented by facts necessarily inaccessible to him at the time. But the inevitable shortcomings of the book add in another way to its value. It vibrates with the spirit of the war and with the generous enthusiasm that inspired those Americans to whom the true character of France had been revealed. Its statements of fact are based on personal experience and intelligent observation. Often, as in the chapter on the industrial effort of France during the war, they are extraordinarily lucid and impressive.

We can cordially recommend this book to everyone who wishes to gain a true view of France and of what should be our attitude toward her people.

ARTHUR D. HILL.

*Boston, Mass.*

*The French Revolution: A Study in Democracy.* By NESTA H. WEBSTER. (New York: E. P. Dutton and Company. Pp. 519.)

This is a curious book. The author's purpose is to sweep away the legends of history perpetuated by the Germanized genius of Carlyle and the older historians, and to write an entirely new and unbiased history of the French Revolution. She therefore returns to the sources (chiefly the royalist and anti-republican sources) which she has read widely and carefully. But she says virtually nothing of all the great reform legislation, the political parties, the agrarian changes, and the attempts to establish liberty and equality, which made the French Revolution an epoch in human history. Instead she gives a detailed and very readable account of six dramatic episodes which resulted in attacks on royal authority and property: the Siege of the Bastille, the March on Versailles, the Invasion of the Tuileries, the Siege of the Tuileries, the Massacres of September, and the Reign of Terror. The underlying causes of these attacks are to be found, she thinks, not in the uprising of a down-trodden people against oppression, but in four great intrigues: "(1) The intrigue of the Orléanists to change the dynasty of France; (2) the intrigue of the Subversives to destroy all religion and all government; (3) the intrigue of Prussia to break the Franco-Austrian alliance; and (4) the intrigue of the English revolutionaries to overthrow the governments both of France and of England" (p. 34).

It reads like an anti-bolshevist account of the Russian Revolution. This attempt to explain the whole revolution as a result of four gigantic intrigues is like reading the history of England in *Punch*, or that of Napoleon in Mr. Broadley's collection of caricatures. That there is a kernel of truth in each of these factors which fomented trouble and disorder in France, as there is at the bottom of every caricature, none will deny; but to magnify them a hundred-fold as the great cause of the Revolution is to caricature, not correct, history. Mrs. Webster's volume is exceedingly interesting; it may lead historians to pay more attention to these new factors which she emphasizes; in fact, in its selective use of abundant source material and its unsympathetic attitude toward "democracy" it is suggestive of Taine. And it likewise makes one think of what Aulard wrote of Taine's work: "*Il n'y a, dans ce roman philosophique, rien qui ressemble à de l'histoire.*"

SIDNEY B. FAY.

*Smith College.*

*Lord Grey of the Reform Bill: Being the Life of Charles, Second Earl Grey.* By GEORGE MACAULAY TREVELYAN. (New York: Longmans Green and Company. Pp. xiv, 413.)

A life of the second Earl Grey has long been needed to complete the series of memoirs, biographies and volumes of letters in which is to be found most of the political history of England since the accession of George I. Lord Grey already had a place on the library shelves through the publication of his correspondence with the Princess Lieven and with William IV. But until the appearance of the present volume there was no authentic life of this great statesman—no life prepared by an author who had access to his letters and papers. Almost every one of Grey's contemporaries among British statesmen has long had his place in political literature, and volumes on the men of later generations in imposing array have found their way into the libraries. But now that the life of Lord Grey has made its appearance it is clear that great advantages have accrued from the long delay.

Mr. George Macaulay Trevelyan is thoroughly familiar with the period in English history in which Grey was an important figure. He is a practised hand in the writing of biographies, having already written the lives of three of Grey's contemporaries—Macaulay, Charles James Fox and John Bright. With the lapse of time it has been possible for him to see in good perspective the years from 1786, when Grey entered

Parliament, to 1834, when he retired from public life, and while writing the book he had also the advantage of the parallel afforded by the recent war with the wars of the French Revolution. He saw the recrudescence of the passions of hatred and intolerance, with all their consequences in the loss of liberties and free speech. All these modern developments threw fresh light on the years of reaction from the last decade of the eighteenth century to the end of the third decade of the nineteenth. Moreover Mr. Trevelyan has been able to single out the great achievement of Lord Grey—the passing of the Reform Act of 1832—and to give this its due prominence, while indicating quite sufficiently the other aspects of his life, public and private. This selection has enabled him to condense the biography into one manageable volume, instead of extending it to three, like Morley's Gladstone or like the composite biography of Disraeli. In these days of many books this one feature of the life of Lord Grey is a cause for profound gratitude to the author.

Like his son-in-law, Lord Durham, Grey has suffered somewhat in popular estimation for lack of an adequate biography, and Mr. Trevelyan had to undertake something of a vindication, just as was done for Durham in Reid's life of the author of the report on Canada. Mr. Trevelyan shows clearly that it is to Lord Grey that the Reform Bill owed not only its passage—probably no other statesman could have won King William IV over to the plan of making peers sufficient to ensure its passage through the house of lords—but also its comprehensiveness, and the sweeping away, without compensation to the owners, of the rotten boroughs which had so long disgraced the English electoral system. It is a fascinating story, excellently told, and even the reader who knows little of English political history will find it interesting on account of the light and hope that it sheds on modern conditions.

A. G. PORRITT.

*Hartford, Conn.*

*Some Problems of the Peace Conference.* By CHARLES HOMER HASKINS AND ROBERT HOWARD LORD. (Cambridge: Harvard University Press. Pp. viii, 290.)

The purpose of these lectures was primarily to explain the more important territorial problems faced by the Peace Conference and to sketch the solutions adopted. The result, however, is of far greater

value than might be supposed from the title or the modest preface, and may be regarded, without question, as the most important work on the conference that has yet appeared. It should do much to counteract the overdrawn and splenetic sketches of Keynes, Dillon, or Creel, and one regrets that it could not have been read by the senators last fall. Only one of the chapters attempts a description of conferential methods. But the tone of the authors and their method of presentation is so strongly reminiscent of the conference and its atmosphere, that the book forms at once a picture and a justification. The force of the justification is enhanced because it is entirely unconscious, for the authors are scrupulously careful to present all arguments on both sides, in the consideration of each problem, and leave it to the reader to decide upon the merits of the solution. They speak, naturally, with authority, since they represented the United States on commissions which drafted some of the more important decisions of the conference. It will be a surprise and relief to many Americans to realize the judicial attitude taken by their delegates at Paris, as well as the wealth of their exact information.

Of the eight chapters the first four are by Mr. Haskins. The first sketches succinctly and with dramatic vigor the European state of mind after the armistice, the immediate problems of reconstruction which must be settled in conjunction with the drafting of permanent peace, and the steps by which the treaty articles took form. The three that follow deal with Belgium and Denmark, Alsace-Lorraine, the Rhine and the Saar. The four last chapters, by Mr. Lord, take up Poland, Austria, Hungary and the Adriatic, and the Balkans. In each an historical setting to the territorial problem is first given, followed by a discussion of the chief factors incidental to its settlement, the various solutions put forward, and the main lines of that ultimately adopted. The lay reader will be attracted by the clarity of presentation, while the serious student will find, closely compressed, information nowhere else collected in convenient form, voluminous bibliographical notes at the end of each chapter, illuminating maps, and a complete index.

CHARLES SEYMOUR.

*Yale University.*

## MINOR NOTICES

Among the various German memoirs relating to the war period Count Bernstorff's *My Three Years in America* (Scribner's, 428 pp.) will probably prove to be the most interesting so far as the student of American diplomacy is concerned. Throughout the book the author keeps to his text; his discussions are confined wholly to German-American relations and have nothing, except incidentally, to do with the diplomatic manoeuvres which went on among European countries during these three fateful years. The writer's main purpose seems to be twofold, namely, to prove that he did his best to prevent America being drawn into the war, and, second, to show that Germany's debacle came as the direct result of diplomatic blunders due to ineptitude in the Wilhelmstrasse. There are many curious statements in the book, some of which no sophisticated reader will believe without confirmation. For example, Count Bernstorff assures us that "Wilson had firmly made up his mind, in case Mr. Hughes was elected, to appoint him secretary of state immediately, and, after Hughes had informed himself on the political position in this office, to hand over the presidency and himself retire." It is rather surprising, if this be true, that the German ambassador should have been the only one taken into the President's confidence. At any rate students of political science will find many things in this volume to provoke dissent, and some also that will meet with hearty concurrence. Among the latter is Count Bernstorff's soliloquy that if America had entered the war two years earlier it would have been a shorter war and a better one for all concerned.

An imposing volume from the Carnegie Endowment for International Peace is *A Monograph on Plebiscites* (1088 pp.), by Sarah Wambaugh. The greater part of this is a collection of official documents; but these are prefixed by a historical study of the theory and practice of plebiscites, from the French Revolution to 1914. This study is both interesting and timely, in view of the plebiscites provided for in the Treaty of Versailles. It would be more useful if printed in a smaller volume, detached from the extensive collection of documents.

A timely monograph entitled *The Senate and Treaties, 1789-1817*, by Professor Ralston Hayden of the University of Michigan has been published by The Macmillan Company in the University of Michigan

*Publications* (264 pp.). The volume contains a detailed study of the treaty-making powers of the United States senate during the formative era. Professor Hayden points out and proves conclusively that the procedure of the senate in dealing with treaties and its relations with the executive in the performance of their joint functions are today "very much as they were a century ago, although quite different from what they were expected to be in 1789." A long and altogether admirable chapter dealing with Jay's treaty brings out many interesting points concerning the senate's power to amend a treaty and the question whether a treaty, if amended, must be resubmitted. The study is based on source materials and is well written.

The University of Chicago Press has issued *An Introduction to the Peace Treaties* by Professor Arthur Pearson Scott (292 pp.) This volume does not purport to be an "inside history" of what went on at the Peace Conference. It is simply an outline of the provisions of the Versailles Treaty and of the minor settlements with a useful commentary on the various clauses, all conveniently arranged for study or reference. The book is in all respects what its title implies. It offers the reader sufficient data upon which to form his own opinions but does not burden the text with those details which are immaterial to the general problem. The author's comments are discriminating, unbiassed, and always helpful.

Messrs. F. P. Dutton & Co. have brought out a second edition of J. Ellis Barker's *Economic Statesmanship* (624 pp.) When this book was first published in the autumn of 1918 the negotiations at Spa and Versailles were still in the future. The new edition accordingly includes about two hundred additional pages dealing with problems and movements which have come to the front during the last two years. About half the new material relates to the economic position and future of Russia and Japan.

The story of the unseating of the Socialist assemblymen by the New York legislature at its last session is fully narrated in Louis Waldman's *Albany: The Crisis in Government*, published by Messrs. Boni & Live-right (233 pp.) The author explains that he has given enough of both sides of the controversy to enable his readers to form adequate judgments of their own, but there is no pretence at any concealment of his personal sympathies. Quotations from the official records are freely used and make up a goodly portion of the volume.

The Arthur H. Clark Company of Cleveland has recently compiled and published *The United States: A Catalogue of Books relating to the History of its Various States, Counties and Cities*. (321 pp.) This is said to be the most extensive catalogue of its sort ever issued and it is particularly valuable for its listing of municipal histories.

Messrs. E. P. Dutton & Co. have issued a *Political Summary of the United States, 1789-1920*, compiled by Ernest Fletcher Clymer. Although the booklet comprises only thirty-two pages it manages to include a great deal of information which a student of American government likes to have within arm's reach, for example, a concise biography of each of the presidents, a table of popular and electoral votes cast at all the presidential elections, etc.

Professors John Alley and Frederick F. Blachly of the University of Oklahoma have collaborated in the writing of a school textbook entitled *The Elements of Government*, which has been published by the Charles E. Merrill Company (360 pp.) The book seems to be well-planned and well written. It contains supplementary chapters on the history and government of Oklahoma.

The Princeton University Press has issued for Professor Edward S. Corwin a little volume entitled *The Constitution and What it means Today* (114 pp.) The book contains the text of the national Constitution with brief commentaries upon each section.

A new edition of Bartlett's *Handbook of American Government*, revised and enlarged by Henry Campbell Black is published by Messrs. Thomas Y. Crowell Company (162 pp.)

Messrs. Henry Holt and Company are the publishers of *The New Frontier* by Guy Emerson (314 pp.), a vigorously-written book which contains many suggestive pages. A few chapter headings will serve to indicate what the volume is about. Here they are: "What is a Liberal?" "The Need for Fifty Million Capitalists," "An American Federation of Brains," and "The American Spirit in World Affairs."

Several essays by the well-honored American jurist, Melville M. Bigelow, have been published under the title *Papers on the Legal History of Government* by Messrs. Little, Brown & Co. (256 pp.) Among the most significant of the essays are those on "Mediaeval English Sovereignty" and "The Old Jury."



Mr. John Graham Brooks continues his useful contributions to the study of social relations in his new book, *Labor's Challenge to the Social Order*, which has recently been brought out by the Macmillan Company (441 pp.) The volume is fully up to the author's standard of writing, which means that it is accurate, good-tempered and interesting.

The Macmillan Company has recently brought out a volume on *The Human Factor in Industry*, written by Lee K. Frankel and Alexander Fleisher of the Metropolitan Insurance Company (366 pp.) Various chapters deal in a practical and illuminating way with such topics as the education of the workman, the relations of the employer to the community, and the organization of a labor department.

*Sovietism*, by William English Walling, undertakes to give the "A, B, C" of Russian Bolshevism according to the Bolsheviks (E. P. Dutton & Co. 220 pp.) The book explains the principles of Sovietism so that the general reader can easily decide what they mean without any undue intellectual effort. It includes a reprint of the Soviet constitution and decrees together with extracts from the writings of Gorky and others.

A series of lectures delivered last year at Wesleyan University by Professor Andrew Cunningham McLaughlin has been issued in book form by the Abingdon Press under the title *Steps in the Development of American Democracy* (210 pp.) There are interesting discussions of Jeffersonian Democracy, Jacksonian Democracy, and of the other stages through which American democracy has passed.

As aids in the teaching of American citizenship, the University of Arkansas has published *A Syllabus on Studies in Citizenship*, by David Y. Thomas (43 pp.); and the University of Minnesota has issued a manual on *Problems of Citizenship* (32 pp.), presenting a classified and annotated reading list. The National Catholic War Council has published, in its series of reconstruction pamphlets, one on *A Program for Citizenship*, one on *The Fundamentals of Citizenship*, and one on *A Plan for Civic Education through Motion Pictures*.

Among recent publications in the *Studies in History, Economics and Public Law*, edited by the Faculty of Political Science at Columbia University are the following: William Parker, *The Paris Bourse and French Finance*; Iwas F. Ayusawa, *International Labor Legislation*; Chong Su See, *The Foreign Trade of China*; Philip Klein, *Prison Methods in New York State*; and William E. Weld, *India's Demand for Transportation*.

## RECENT PUBLICATIONS OF POLITICAL INTEREST BOOKS AND PERIODICALS

CLARENCE A. BERDAHL

### AMERICAN GOVERNMENT AND PUBLIC LAW

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Published Quarterly by

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Mount Royal and Guilford Avenues, Baltimore, Md.

Entered as second-class matter February 24, 1913, at the postoffice at Baltimore, Maryland, under the act of August 24, 1912. Acceptance for mailing at special rate of postage provided for in Section 1103, Act of October 3, 1917, authorized on July 16, 1918.

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